

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-316

JOHN R. BATES and VAN O'STEEN

Appellants,

—V.—

STATE BAR OF ARIZONA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ARIZONA

JURISDICTIONAL STATEMENT FILED SEPTEMBER 1, 1976
PROBABLE JURISDICTION NOTED OCTOBER 4, 1976

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RELEVANT DOCKET ENTRIES

Note: The proceeding below was technically original with the Arizona Supreme Court. There is no formal docket entry list. The following constitutes a list of relevant entries to the official file and the dates thereof.

<u>DATE</u>	<u>PROCEEDING</u>
1976	
March 2,	FORMAL COMPLAINT with exhibit and Notice filed.
March 23,	RESPONDENTS' Memorandum of Law filed.
March 23,	RESPONDENTS' Notice of Factual Issues filed.
March 23,	SYNOPTICAL STATEMENT of Position of Complainant filed.
March 23,	RESPONDENTS' ANSWER filed.
April 8,	STIPULATION for Addition to Record filed.
April 8,	FINDINGS of Fact, Conclusions of Law, and Recommendations

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of Special Local Administrative Committee of the State Bar of Arizona for District No. 5, signed.

April 27, RESPONDENTS' Objection to Recommendation of the Administrative Committee and Request for Oral Argument before the Board of Governors, filed.

April 30, FINDINGS of Fact, Conclusions of Law and Recommendations of the Board of Governors of the State Bar of Arizona, signed.

May 4, RESPONDENTS' Objection to Recommendations of Board of Governors, filed.

May 7, STIPULATION and Order regarding timing for filing of briefs and waiver of

DATEPROCEEDINGS

oral argument filed.

May 7, TRANSCRIPT of proceedings before the Special Local Administrative Committee of the State Bar of Arizona for District No. 5, with Exhibits, filed.

May 7, BRIEF of the State Bar of Arizona to the Supreme Court of Arizona, filed.

May 7, BRIEF of Respondents to the Supreme Court of Arizona, filed.

May 17, Board of Governors of the State Bar of Arizona hearing transcript, filed.

June 1, MEMORANDUM re: Supplemental Citation with Exhibit and Affidavit of Service, filed.

June 1, SUPPLEMENTAL memorandum of Respondent and Affidavit

DATEPROCEEDINGS

of Service, filed.

July 12, LETTER from William C. Canby, Jr. to The Honorable James Duke Cameron dated July 9, 1976 transmitting a copy of the U.S. Supreme Court decision in Cantor v. Detroit Edison, Co. (No. 75-122 decided July 6, 1976), filed.

July 26, OPINION and ORDER of the Arizona Supreme Court entered.

July 26, NOTICE of Decision by Clifford H. Ward, Clerk of the Arizona Supreme Court, filed.

July 28, NOTICE of Appeal to the United States Supreme Court and Proof of Service filed.

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August 9, ORDER of Mr. Justice Rehnquist staying order of censure, filed.

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE
OF THE
STATE BAR OF ARIZONA
FOR
DISTRICT NO. 5

In the Matter of a Member of)
The State Bar of Arizona)
JOHN R. BATES and VAN) No. 76-1-S16
O'STEEN,)
Respondents.)

FORMAL COMPLAINT
(Dated March 2, 1976)

TO: JOHN R. BATES and VAN O'STEEN, Respondents;

Complaint is made against you as follows:

1. Respondents are members of the State Bar of Arizona.
2. On February 22, 1976 Respondents caused to be published in a newspaper, The Arizona Republic, an advertisement offering Respondents' legal services and publicizing fees. A copy of this advertisement is attached as Exhibit A to this complaint.
3. Publication of this advertisement is

in violation of the Code of Professional Responsibility of the State Bar of Arizona, specifically Disciplinary Rule 2-101 (B).

4. This formal complaint is issued and served by order of Special Local Administrative Committee S16 of the State Bar of Arizona pursuant to and in accordance with the rules of the Supreme Court of Arizona pertaining to discipline of attorneys.

Dated: March 2, 1976

By: Philip E. von Ammon
Chairman - Special
Local Administrative
Committee

Exhibit A, copy of advertisement which appeared in the Arizona Republic on February 22, 1976, appears on page 409, infra.

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE
OF THE
STATE BAR OF ARIZONA
FOR
DISTRICT NO. 4A

In the Matter of a Member)
)
Of the State Bar of Arizona) No. 76-1-616
)
)

ANSWER
(Dated March 23, 1976)

For their answer to the Formal Complaint in the proceedings herein, Respondents John R. Bates and Van O'Steen allege as follows:

1. Allegations of paragraph 1 are admitted.
2. Allegations of paragraph 2 are admitted.
3. Allegations of paragraph 3 are admitted, but Respondents allege the invalidity of Disciplinary Rule 2-101(B) for the reasons stated in paragraphs 5 through

12 of this Answer.

4. Not having sufficient information to form a belief, Respondents deny the allegations of paragraph 4.

5. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates the rights of Respondents to freedom of speech and press under the First and Fourteenth Amendments to the United States Constitution.

6. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates the First, Sixth and Fourteenth Amendment rights of potential clients to receive information concerning the availability and cost of legal services.

7. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates Respondents' Fourteenth Amendment right to equal protection of the laws in that it generally prohibits advertising by attorneys

in private practice but permits advertising by qualified legal assistance organizations, and permits attorneys involved in political or (2) organizational activities to publicize themselves as attorneys.

8. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced violates Respondents' Fourteenth Amendment right to due process of law in that its prohibitions are so vague as to be incapable of informing a person of normal understanding what is prohibited and what is not.

9. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced constitutes a violation of 15 U.S.C. §1 (Sherman Act) in that it is an instrumental part of a combination and conspiracy to restrain interstate trade and commerce in the practice of law, and interstate trade and commerce which depends upon the practice of law.

10. Respondents allege that Disciplinary

Rule 2-101(B) on its face and as enforced constitutes a violation of 15 U.S.C. §2 (Sherman Act) in that it is an instrumental part of a monopoly and attempt to monopolize interstate trade and commerce in the practice of law.

11. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced constitutes a violation of Ariz. Rev. Stat. §44-1402 in that it is an instrumental part of a combination and conspiracy to restrain trade or commerce in the practice of law.

12. Respondents allege that Disciplinary Rule 2-101(B) on its face and as enforced constitutes a violation of Ariz. Rev. Stat. §44-1403 in that it is an instrumental part of a monopoly or attempt to monopolize trade or commerce in the practice of law.

13. Respondents allege that the State Bar disciplinary hearing procedures under which Respondents' case is being heard violate Respondents' rights to due process of

law under the Fourteenth Amendment in that initial hearings and first review are conducted by practitioners interested in the outcome of the case by reason of their engagement in the private practice of (3) law in competition with Respondents and others who may wish to advertise.

WHEREFORE Respondents pray that this proceeding be dismissed.

Dated March 23, 1976

By: William C. Canby, Jr.
Attorney for Respondents

* * * *

STIPULATED PRETRIAL ORDER
(Title omitted in printing)
(Dated March 25, 1976)

The parties respectfully request that the Disciplinary Committee enter a pretrial order as follows:

1. There is no dispute that Respondents violated Disciplinary Rule 2-101(B), and no evidence need be taken on the question of

whether they caused the particular advertisement to be printed.

2. The Respondents stand on their position that the rule is invalid and not properly enforceable, while the complainant takes the opposite view. The parties also differ as to the validity of the disciplinary procedure. The views of the parties in these respects have been set forth in memoranda already filed. Without in any respect waiving their positions, the parties waive oral argument on these questions, and stand on their positions as taken in writing.

3. The parties request the Committee to allow up to a day for the taking of evidence on this matter. The parties will work out for themselves a reasonable allocation of time to their mutual satisfaction. The State Bar of Arizona will produce for cross-examination the president of the State Bar of Arizona and the Respondents will produce for

cross-examination the two individuals against whom complaint has been made.

(2) 4. Both parties waive objections as to both foundation and relevance as to any exhibits either side may wish to offer or any live testimony either side may wish to develop. In so doing, the parties are not acknowledging that any particular item of evidence is, in fact, truly relevant to the case. The object is, rather, to permit a record to be made which will permit each side to feel that it can fairly present its contentions both here and in other tribunals to which this matter may pass. Each party reserves the right to contend that whatever evidence does come into the record may be of no weight or persuasiveness. This stipulation reflects the wish of the parties not to consume time over points of evidence. Each side does, however, reserve the right to object to what it may regard as prejudicial leading or

excessive hearsay, agreeing that any question of hearsay shall be passed upon in terms of whether the contested material has any persuasive value.

5. The parties request the speedy production of a transcript. They reserve the right to request at the close of the hearing the possibility of submitting supplementary memoranda.

LEWIS & ROCA
By: Orme Lewis and
John P. Frank
Attorneys for The
State Bar of Arizona

By: William C. Canby, Jr.
Attorney for Respondents

* * * *

(3)

ORDER

The foregoing stipulation is accepted and adopted as a pretrial order. This matter shall be heard on the 7th day of April, 1976, at 1700 First National Bank Plaza at

1:00 o'clock p.m.

Dated: March 25, 1976

By: Philip von Ammon,
Chairman

* * * *

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE

OF THE

STATE BAR OF ARIZONA

FOR

DISTRICT NO. 5

In the Matter of a Member of)	
The State Bar of Arizona)	
)
JOHN R. BATES and)	No. 76-1-S16
VAN O'STEEN,)	
)
Respondents.)	
)

TRANSCRIPT OF PROCEEDINGS

* * * *

(4)

THE CHAIRMAN: This is the time and place set for the hearing of the Special Local Administrative Committee of the State Bar of Arizona for District No. 5

in the matter of a Member of the State Bar of Arizona, John R. Bates and Van O'Steen, Respondents, No.: 76-1-S16.

The Members of the Administrative Committee being Carl Divelbiss, Mr. Ivan Robinette, and Mr. Philip von Ammon are present.

I'd like to hear the appearance also on behalf of the parties.

MR. FRANK: For the Complainant, my partner, Mr. Orme Lewis will join me in a moment. I will proceed, however, in the meantime I'm John P. Frank, and I have with me on table and am receiving papers from a paralegal assistant, Miss Lee.

THE CHAIRMAN: Mr. Canby?

MR. CANBY: My name is William C. Canby, Jr. I'm attorney for both Respondents, Mr. Bates and Mr. O'Steen.

(5) THE CHAIRMAN: I'd like to have the

original handed to the court reporter, who will mark it as Bar Exhibit No. 1, if there is no objection, Mr. Canby.

MR. CANBY: No objection.

THE CHAIRMAN: It may be received.

(Document marked Bar Exhibit No. 1 for identification by the Notary, and received in evidence.)

MR. FRANK: As Bar Exhibit No. 2, I advise the panel that we have made certain inquiries, as particular questions to some 14 Phoenix law firms. The answers have been compiled into Exhibit 2. We have stipulated that Exhibit 2 may be admitted and that the underlying letters will be maintained in our office, should either Mr. Canby or this panel or any later person reviewing the matter have any desire at any later time to have access to them. We have in this Exhibit substituted anonymous terms for (6) the names of the firms answering the particular questions, al-

though, we have listed the firms, and we have stipulated that that may be done.

It is further stipulated between us that we have offered these persons for cross-examination. The other side waives cross-examination.

It is stipulated that the appropriate partners from each of these firms would give these answers to these questions if they were asked orally.

Mr. Canby, have I fairly stated our stipulation?

MR. CANBY: Yes. So stipulated.

MR. FRANK: I offer the original of this as Bar Exhibit No. 2, and give copies to each member of the panel.

(Document marked Bar Exhibit No. 2 for identification by the Notary.)

THE CHAIRMAN: Bar Exhibit No. 2 may be received in evidence, subject to the stipulation of the parties as stated for the

record by Mr. Frank.

(Bar Exhibit No. 2 received in evidence.)

MR. FRANK: There is a further stipulation I should have mentioned. One of the 14 firms which has answered the questionnaire is Lewis and Roca, of which I am a member. So, as to be scrupulously careful to avoid any problem about being both witness and counsel in the same (7) matter, Mr. Canby has stipulated with me that Lewis and Roca might give answers to the questions; that they might be included and I might nonetheless appear with Mr. Lewis as counsel, and there would be no prejudice on this to the other side; the answers being strictly informational in any way.

Mr. Canby, have I fairly stated that?

MR. CANBY: So stipulated.

THE CHAIRMAN: In view of the stipulation, the Respondents waive the right to examine any persons who are spokesman on

behalf of these firms, would seem to me, you wouldn't be under any liability anyway, Mr. Frank.

MR. FRANK: Now, we have taken a number of depositions -- indeed, most of the testimony is probably in deposition by now. I tender to the reporter the originals of the deposition of Doctor Helme and Robert Begam, noting simply by way of identification that Doctor Helme testified concerning the professional ethics of the medical profession, for such bearing as that may have on this case, and Mr. Begam testified in his capacity as president-elect of the American Trial Lawyers Association.

THE CHAIRMAN: Very well, the Deposition of Robert Begam will be marked as Exhibit No. 3, and if there is no objection, the deposition will be received in evidence.

(8) Is there any objection to the

receipt of Deposition of Robert Begam, Exhibit No. 3?

MR. CANBY: No objection, subject, of course, to our stipulation.

MR. FRANK: Yes. Our stipulation, I will note, again, for the panel, it is: Since this is not a jury case, that you will give such weight as it deserves to any portion of the materials. That's all.

MR. CANBY: No objection.

(Deposition of Robert G. Begam, Esquire, marked Bar Exhibit No. 3 for identification by the Notary.)

THE CHAIRMAN: Very well, Exhibit No. 3 will be received.

(Bar Exhibit No. 3 received in evidence.)

THE CHAIRMAN: The deposition of William Helme, H-e-l-m-e may be marked Exhibit No. 4 and may be received subject to the same stipulation.

(Deposition of William Helme, M.D. was marked Bar Exhibit No. 4 for identification by the Notary and received in evidence.)

MR. FRANK: Next, Mr. Mark Harrison, the President of the Arizona State Bar was that in a technical sense perhaps this is his deposition, but I had considerable direct, and I'd ask leave to offer it by stipulation, as Bar Exhibit next in (9) number.

THE CHAIRMAN: Any objection, Mr. Canby?

MR. CANBY: No objection.

THE CHAIRMAN: It may be received.

(Deposition of Mark I. Harrison, Esquire was marked Bar Exhibit No. 5 for identification by the Notary, and received in evidence.)

MR FRANK: A point of information, Mr. Chairman, I hold a copy of the advertisement which is the subject of this case. It is attached to the Complaint. Is there any point in having it marked, especially as an Exhibit, as well?

THE CHAIRMAN: Yes.

MR. FRANK: All right. I offer the advertisement as the Exhibit next in number.

THE CHAIRMAN: That's Bar Exhibit No. 6. Absent any objection, it may be received.

MR. CANBY: No objection.

THE CHAIRMAN: If you can figure out some evidentiary (sic) grounds to exclude it, Mr. Canby, I'd certainly be interested in your expose.

MR. CANBY: Especially since it's been admitted in our Answer.

(Copy of ad marked Bar Exhibit No. 6 for identification by the Notary and received in evidence.)

(10) MR. FRANK: Mr. Chairman, I now offer as the next three Exhibits three documents relating to the profession of accounting, which will be taken up in the course of testimony by Mr. Davidson, but since they will be admitted by stipulation, I present them at this time.

THE CHAIRMAN: I'd like to have them marked separately. You can choose the order, I don't care, but tell us what it is.

What is no. 7?

MR. FRANK: No. 7 is the "restatement (sic) of the Code of Professional Ethics" of the accounting profession.

THE CHAIRMAN: Any objection?

MR. CANBY: Let me take a quick look at those.

MR. FRANK: (Presenting)

MR. CANBY: No objection.

THE CHAIRMAN: Seven may be received, subject to stipulation of the parties.

(Booklet marked Bar Exhibit No. 7 and received in evidence.)

THE CHAIRMAN: No. 8?

MR. FRANK: These are the "Rules and Regulations" of the "Arizona State Board of Accountancy".

(Booklet marked Bar Exhibit No. 8 for

identification by the Notary.)

THE CHAIRMAN: Any objection to that, Mr. Canby?

(11) MR. CANBY: Again, may I see that for a moment?

THE CHAIRMAN: Certainly.

MR. CANBY: No objection.

THE CHAIRMAN: It will be received.

(Bar Exhibit No. 8 received in evidence.)

THE CHAIRMAN: No. 9?

MR. FRANK: No. 9 is an excerpt from what Mr. Davidson will identify as the standard text on the "Ethical Standards of the Accounting Profession" by Messrs. Carey and Doherty.

MR. CANBY: No objection.

THE CHAIRMAN: Did you say you had no objection, Mr. Canby?

MR. CANBY: No objection.

THE CHAIRMAN: Bar Exhibit No. 9 may

be received in evidence.

(Copy of excerpt marked Bar Exhibit No. 9 for identification by the Notary, and received in evidence.)

MR. FRANK: Exhibit 10, I'm told, by inadvertence is not in the room, but I'm told it will be brought in. I ask to hold the number. What it is is the revised disciplinary rule relating to discipline of the American Bar Association as adopted by the House of Delegates in February of this year, and by oversight it was not brought into the room.

(12) May I hold the number for that purpose and tender it as rapidly as it's brought in?

THE CHAIRMAN: You certainly may.

* * * *

LYMAN A. DAVIDSON, being sworn as a witness by the Chairman, was examined and testifies as follows:

(13)

EXAMINATION

By Mr. Frank:

Q. Mr. Davidson, until recently you have been engaged in the profession of public accountancy, I believe?

A. Yes.

Q. I think you have just retired; is that right?

A. September 30th.

Q. With what firm were you associated?

A. I was partner in charge of Ernst & Ernst, here at Phoenix.

Q. For how many years had you been in that position?

A. Well, I opened the office 16 years ago, and the one in Tucson 14 years ago.

Q. So that you were the officer in charge for the entire state; is that correct?

A. That's correct.

Q. Had you been in the profession of

accountancy prior to that time?

A. I had been in totally for 32 years, in which seven was on my own account.

MR. FRANK: Mr. Canby, I don't want to spend time needlessly on further foundation. May we have a stipulation that Mr. Davidson is an expert in the field of accounting?

(14)MR. CANBY: Yes.

THE CHAIRMAN: You didn't specifically establish whether he was a certified public accountant.

MR. FRANK: Thank you.

Q. BY MR. FRANK: Mr. Davidson, are you a certified public accountant?

A. Yes.

Q. For how many years have you been?

A. I think that that figure would be around 30 years.

Q. Mr. Davidson, is there some national organization in the field of pub-

lic accounting?

A. Yes.

Q. What is that organization?

A. The American Institute of CPA's.

Q. Are you a member of that organization?

A. Yes.

Q. Is there also a state organization?

A. The Arizona Society of CPA's.

Q. What proportion of the members of the accounting profession; that is to say of the certified public accountants of the state are members of the state association?

A. I don't have an exact figure available.

Q. Approximately?

A. Approximately 75 percent.

(15) Q. What offices, if any, have you held in the state profession -- state association?

A. I have been a member of the Ethics

Committee; a number of other committees, and served on the Board of the Society for a number of years, including the last one as president.

Q. Mr. Davidson, in addition to these two organizations, which I take it are voluntary organizations -- is that correct?

A. That's correct.

Q. -- is there also some state regulatory agency in the field of accounting?

A. The State Board of Accountants.

THE CHAIRMAN: Excuse me, Mr. Frank. The record will show that Mr. Orme Lewis appearing as additional counsel or associate counsel for the State Bar has joined us in the room.

MR. LEWIS: My apologies.

Q. BY MR. FRANK: Mr. Davidson, I believe the answer you just gave me is that there is something called the State Board of Accountancy; is that correct?

A. Yes, that's correct.

Q. And the State Board of Accountancy is, briefly speaking, what?

A. It's a regulatory state agency.

(16) Q. Established under state law?

A. Correct.

Q. I show you what has been marked into evidence as Exhibit 8, headed, "Arizona State Board of Accountancy Rules and Regulations", and ask you what that is? (Presenting).

Mr. Davidson, are those the regulations of the accounting profession?

A. These are the Rules and Regulations of the Arizona State Board of Accountancy.

Q. Have you had any official organization capacity with that organization?

A. I was a member of the State Board, which ended last year, June '74 -- or '75. I was president of that group.

Q. Mr. Davidson, does not the organization of accountants have some code of

professional ethics of some sort?

A. Yes, sir.

Q. I will show you what has been marked into evidence as Exhibit No. 7, and will ask you if that is a copy of what is called a "restatement (sic) of the Code of Professional Ethics" which is commonly used in your profession?

A. It is, sir.

(17) Q. Now, how, if at all, does that national code relate to the code, if there is one, in the State of Arizona?

A. They are very similar, if not identical.

Q. Would you explain, please, how this is achieved?

Is the national code adopted by the state organization?

A. That is correct. If they so desire.

Q. Has it been so adopted in this state?

A. It has been in this state.

Q. In addition to this, is it also adopted by the State Board of Accountancy?

A. Yes.

Q. So that in other words, the very same rules become national standards, state standards, and then state regulations, as well; is that correct?

A. That is correct.

Q. Are you generally acquainted with the system by which the American Bar Association drafts standards of ethical conduct for lawyers?

A. In general, yes.

Q. Are you acquainted with the fact that subject to such modifications as it may think appropriate, the State Supreme Court then adopts those rules or canons for the governance of lawyers in the State of Arizona?

(18) A. Yes, sir.

Q. Is the procedure by which the State

Board of Accountancy adopts the accounting rules of the national organization essentially analogous to the procedure with which the State Supreme Court adopts the rules for the profession of lawyers?

A. I would say essentially the same.

THE CHAIRMAN: Mr. Frank, are you undertaking to establish that the National Code of Professional Ethics for the Profession of Accountancy, by virtue of the adoption by the State Board of Accountancy has the force of law in this state?

MR. FRANK: I wish to show that it has the force of law, which will make it different from some of the other professions, but like that of the legal profession; then, go into its contents, yes.

THE CHAIRMAN: Okay.

Q. BY MR. FRANK: Now, Mr. Davidson, is there some provision in the "restatement" which is before you which deals with the topic of advertising?

A. Yes.

Q. And you have obviously told me about this in advance. I believe it's Section -- well, I don't know. What Section is it? You have it.

A. I beg your pardon. Are you referring --

(19) Q. -- to the provision dealing with solicitation and advertising in the booklet, which is now in your hands, the "restatement" of the national code.

THE CHAIRMAN: That's Bar Exhibit No. 7.

MR. FRANK: Thank you.

A. If I may read from it --

THE CHAIRMAN: What rule number?

THE WITNESS: "502 Solicitation and advertising".

"A member shall not seek to obtain clients by solicitation. Advertising is a form of solicitation and is prohibited."

Q. BY MR. FRANK: Mr. Davidson, I

now show you Exhibit 9, which is the extract from the works of Carey and Doherty on "Ethical Standards", and will ask you what that is?

Who are Carey and Doherty?

A. I beg your pardon. John Carey was the highly respected Executive Director of the American Institute for CPA's for 20 or 30 years, and in the opinion of my peers in the accounting profession, was probably one of the most knowledgeable people about the accounting profession, because of his long association.

Q. I take it the second author is someone associated with him?

A. He was an associate, correct.

(20) Q. In the extract which you have before you, there is some textual expansion of just what advertising is, as what is prohibited; is that correct?

A. That's correct.

THE CHAIRMAN: That's Bar Exhibit No.

9 which the witness is referring to?

MR. FRANK: Yes, Bar Exhibit No. 9.

Thank you.

Q. BY MR. FRANK: Mr. Davidson, does the State Board of Accountancy in its capacity as the disciplinary body for accountants deal with cases of accountants who are charged with having violated the rules of which we speak?

A. Yes.

Q. And take, for example, a recent year, 1974 -- I believe you gathered the figures as to the number of cases that came before your board concerning solicitation or advertising in that year; didn't you?

A. Yes.

Q. You are free to look at your notes.

A. May I look at my notes on that?

Q. Yes. Tell us what actually happened in a given year on that score?

A. The year 1973, the board considered

26 complaints concerning solicitation and advertising. That would be exclusive of so-called advertising in the Yellow Pages or the Telephone Book. Those were considered to be minor.

(21) The figures given to me this morning by the current Executive Secretary of our State Board said that in 1974 we revoked one certificate and censured another firm.

Q. Mr. Davidson, for how long has your profession had a written rule prohibiting solicitation and advertising?

A. My authority is Mr. Carey's book, and he states that the Rules of Ethics have been under an evolutionary for the past 70 years; and my 32 years in accounting, certainly, there has been this prohibition. I can't give you the exact date that it was adopted.

Q. Is the prohibition on advertising generally honored in the profession?

A. No question about it, sir. Yes.

Q. So that in your many years in this state, have you ever seen, for example, a newspaper ad by an accountant?

A. No, sir.

Q. So, as far as you know, has there ever been one?

A. So far as I know, there never has been one.

Q. What becomes, then, of the young accountants who come to the community and who wish to develop their professions?

How do they do that?

(22) A. Well, they seem to have no difficulty. I don't know of any accountants who, because of his inability to advertise has ever had to go out of practice.

Q. In short, has it been your observations that young accountants come to this community and so, in fact, get professionally started without any particular difficulty?

A. Yes, sir.

Q. And that's a widespread generalization?

A. If I may say so, Mr. Frank, we do require in this state two years of experience in a CPA firm, after passing the examination and, of course, that means that these people not only do, but must pursue that course, so that that gives them an opportunity, if I may say so, to go out in practice on their own.

THE CHAIRMAN: Do you mean they have to work for a firm of CPA's before they receive their own certificate?

THE WITNESS: That's correct, before they receive a license to practice. Certificate is correct.

THE CHAIRMAN: All right.

Q. BY MR. FRANK: Mr. Davidson, do you regard advertising as desirable for your profession?

Would this be a helpful innovation,

in your opinion?

A. I would say it would be a disaster.

(23) Q. How would the public interests be disserved if you were to repeal or abrogate your rules of ethics in this respect?

THE CHAIRMAN: Did you say "served" or "disserved"?

MR. FRANK: "Disserved". Thank you.

A. I think the public would be disserved, because the idea is to have the public to understand that we in the profession know we have a code of ethics that is to their best interest.

Q. BY MR. FRANK: Would you be concrete about that?

Just where would the harm be if the accounting firms were to put ads in the paper saying, audit so and so much per hour, or some other kind of commercial display of that type?

A. Well, again, I think I should go back to the point that at one time the accountants were not engaged as a profession. This would have been in the early 1900's, and they found out at that time that they would not be considered anything other than businessmen, unless they did have a complete set of rules of conduct.

Q. How is the accountant different from a businessman, as you have just used the phrase?

A. Well, first of all, I think we are distinguished from the businessman by reason of the fact that we must be absolutely independent. We may be engaged by a client (24) and find that his books are not in good order, and so state, for the benefit of the public.

We do serve the public, basically. I think that distinguishes us from any businessman.

Q. And that public service to which

you describe, by virtue of your independence, do you have an opinion as to how that would be affected if you advertise and solicited and went out looking for business?

A. Well, I think anytime you advertise you imply that some kind of a profit motive -- that your first obligation is not to the public, it is to yourself, to make a profit. That is my feeling, and the way it would be taken.

I think the public, over this period of 70 years has been educated to the fact that accountants do not solicit or advertise, and it would be degrading to the profession and not in the best interest of the public if they did.

Q. I take it it is your opinion it could be incompatible or it would be incompatible with the independence of your audit if you hustled the business in the first place?

A. No question about that.

MR. CANBY: Excuse me. Was that intended to be a restatement of his testimony?

(25) MR. FRANK: I'm trying to find out what it is that he is saying.

Q. BY MR. FRANK: So, let me ask: Was that a restatement of your testimony?

A. I would say yes. In fact, I'm willing to say it again: I'm saying it would certainly reflect upon the independence of the accountant if we were to put ads in the paper or solicit in any other form.

THE CHAIRMAN: Mr. Canby, for the sake of the record, I believe that Mr. Frank did, in essence, restate the nub of Mr. Davidson's testimony. I think that the thrust of it was that he believes that the independence of the accountant, and therefore the objective of their audits would be threatened or jeopardized by advertising.

What I have not heard yet is why he

believes that to be true; just what the causal connection is between the two.

Q. BY MR. FRANK: Why do you believe that to be true, Mr. Davidson?

A. Well, it seems to me it is self-evident that if you advertise your attainments, your independence is absolutely subject to question.

Q. Are you able to expand on that any further for the benefit of Mr. von Ammon and the record, of course?

A. Is it permissible --

(26) Q. I think you have the volume -- I'm aware that you have been prepared for this testimony, and a passage of Mr. Carey's book appeals to you and a better statement than your own statement. I'm sure you can have access to it.

MR. CHAIRMAN: That's fine. Will you tell us the page number?

Q. BY MR. FRANK: Do you want to pull out the book itself? I don't think we

Xeroxed that page.

A. Page 47, which is an Exhibit here.

Q. Is that the passage that we duplicated?

A. Yes. Section 28, page 47.

MR. DIVELBISS: What Exhibit?

THE CHAIRMAN: Exhibit No. 9, Carl.

MR. FRANK: Since it is very short, would you mind, Mr. von Ammon, so that if the record ever gets disassociated from the Exhibit, it can be readily understood; may I ask Mr. Davidson to quote the passage which I take it he relies upon?

THE CHAIRMAN: Certainly.

Q. BY MR. FRANK: Would you do that?

A. "The general prohibition against advertising is accepted today without much question. To be sure, there is nothing illegal or immoral about advertising as such, but it is almost universally regarded as unprofessional."

(27) "Younger accountants are some-

times tempted to advertise or solicit, and they may suspect that the rules are a result of a conspiracy among their older colleagues to protect themselves against new competition."

"Actually, the rule against advertising has many sound reasons to support it. In the first place, advertising would not benefit the young practitioner. If it were generally permitted, the larger, well-established firms could afford to advertise on a scale that would throw the young practitioner wholly in the shade. Secondly, advertising is commercial. Professional accounting service is not a tangible product to be sold like a commodity. Its value depends on the knowledge, skill and honesty of the CPA. Who would be impressed with a man's own statement that he is intelligent, skillful and honest? Lastly, advertising does not pay."

This may be a direct conflict with

some other testimony, but that's the way we feel about it. And that's it.

Q. But there is another passage. This will be my next question.

In the volume which you have at your side, there is, I think, near the beginning of it a passage dealing with the concept of the independence of the accountant and the relation of that independence in ethics.

(28) THE CHAIRMAN: This is from the same work from which Exhibit 9 has been extracted?

THE WITNESS: Yes.

Q. BY MR. FRANK: Am I correct in my memory of that point, Mr. Davidson?

A. Concerning advertising?

Q. No, the relationship of ethics, generally, to the accountant's independence, or is my memory at fault?

A. Well, I think I would have to say that as far as this volume is concerned, the matter of independence is discussed

thoroughly. It's certainly a major part of our Code of Professional Ethics, but as far as relating this to advertising, I think I'd have to stand on the testimony that I have given to date.

Q. Do you adopt as your own the statements by Mr. Carey, as to your views?

A. I do.

MR. FRANK: That's all I have.

THE CHAIRMAN: Mr. Canby.

* * * *

EXAMINATION

By Mr. Canby:

Q. Mr. Davidson, did I understand your point to be that a beginning accountant here in his two years of service in a firm has an opportunity to develop clients (29) from that contact?

A. Oh, I think that opportunity exists. If I may refer to your term "beginning accountant", I'm referring to the man who has passed the CPA exam in the State of Arizona

and must serve his two years under a CPA.

Now, we obviously have reciprocal privileges with other states. A man from another state, in other words, provided he meets the specifications of the State Board of Accountancy can enter practice in this state, and many do.

Q. You don't know of any certified public accountants who have simply been unable to attract a viable clientele here in Arizona?

A. No, not to my personal knowledge.

Q. Is there more certified public accountant business than can reasonably be handled?

A. I think it is becoming that way.

Q. I realize it's a general question, but what is the general nature of the certified public accountant business that you get? What kind of clients would you do business for?

A. We would do business, I think,

for almost all kinds of clients in a national firm, which we are. General services performed by CPA's are in the area of auditing, tax service and in an area called management (30) services.

The clients would range from small to medium, to large.

The type of service required, of course, would depend upon the type of industry we were talking about.

Q. Are all these clients in some sort of business?

A. No, some are tax clients who are retired.

Q. And the auditings, you mentioned three categories; two of which are auditing and management services?

A. Yes, sir.

Q. Presumably, that would be for people who are engaged in business; is that right?

A. That is correct. I might add; also

point out to you sir, that about 70 percent of the work of a national public accounting firm is in the auditing area, which requires the independence factor.

Q. About 70 percent?

A. Yes.

Q. Thank you. Are you familiar, Mr. Davidson, with a letter of the Arizona Attorney General to the State Board of Accountancy in regard to advertising? It's dated September 19, 1975.

MR. CANBY: May I have this marked?

THE CHAIRMAN: Yes. What we will do is to (31) continue with the numbers seriatim, and we will identify this as Respondents' Exhibit No. 11.

MR. FRANK: Why don't I put in 10 right now, as long as we are at a break? May I do that? It's here.

THE CHAIRMAN: Yes. Bar Exhibit 10 is the revised disciplinary rule relating to the advertising, adopted by the House of

Delegates by the American Bar Association.

MR. FRANK: Yes. I would like to note for the record, I put it in because it is applicable here. It has not been adopted by our Supreme Court, but simply for the completion of the record, that if it should be useful at any point.

THE CHAIRMAN: With that avowal, I guess there is no objection.

MR. CANBY: I have a question or two. I have no objection.

The question is whether this is effective; whether there is any action of the House of Delegates or the American Bar Association required to make it official ABA policy?

MR. FRANK: It's my understanding that is official ABA policy, by virtue of the action of the House of Delegates.

THE CHAIRMAN: Do you have any different understanding, Mr. Canby?

(32) MR. CANBY: I have no knowledge of a difference. I had simply heard some-

where that there was one more meeting in which they have to consider it by the House of Delegates, as a whole. I may well be in error.

THE CHAIRMAN: Before the record is closed, can we get some kind of a stipulation between the parties with respect to this fact?

I think it can be determined by inquiring of some person who is knowledgeable in the ABA organization.

MR. CANBY: I'd be happy to stipulate to it on the basis of a telephone inquiry or anything else.

THE CHAIRMAN: We will receive the stipulation later on, once we know what the facts are.

In the meantime, Bar Exhibit 10 may be received.

(Document marked Bar Exhibit No. 10 for identification by the Notary and received in evidence.)

THE CHAIRMAN: Now, No. 11 has been described as --

MR. CANBY: -- a letter from the Attorney General of Arizona to the Arizona State Board of Accountancy, September 19, 1975, reported in the 1975-2 "Trade Regulation Reports".

Do you want to mark this?

I'll be happy to offer it in evidence.

MR. FRANK: I'd like to have it put in evidence.

THE CHAIRMAN: Do you have any objection to (33) offering it in evidence?

MR. FRANK: No.

THE CHAIRMAN: Very well, Respondents' Exhibit No. 11 may be received in evidence.

(Document marked Respondents' Exhibit No. 11 for identification by the Notary and received in evidence.)

THE CHAIRMAN: Mr. Davidson, I am placing in front of you Respondents' Exhibit No. 11.

THE WITNESS: May I take time to read it?

MR. FRANK: I believe this was issued subsequent to Mr. Davidson's retirement, on July 7th.

MR. CANBY: I gather that is correct.

Q. BY MR. CANBY: You left in July of '75?

A. That's correct.

Q. I think any knowledge of that would be indirect. I think you had heard of it or were aware of it?

A. I am aware, sir, that they did eliminate our rule against competitive bidding. The rule as stated previous to that was that there would be a prohibition against competitive bidding on a price basis.

Nevertheless, the accounting profession has always said that the client is entitled to be informed of the amount of the fees for the engagement. It was our position at the time the best qualified firm should be select-

ed; fee discussions should be held. If the client (34) were dissatisfied, he could call on the next qualified firm.

The Attorney General said, yes, that the competitive bidding rule of the state is illegal. I have not seen the opinion. If it refers to advertising, I was not aware of that.

Q. I'm sorry. Competitive bidding is what I meant. I misspoke, and I apologize.

A. Without reading it, Mr. Canby, may I ask you: Is advertising mentioned in here?

Q. No, it is not, to my knowledge. I misspoke. I'm sorry about that.

A. It is true.

MR. FRANK: What question is before the witness, Mr. Canby? I'm mixed up.

MR. CANBY: The question is: Was he familiar with the Attorney General's letter on competitive bidding.

THE WITNESS: Yes.

MR. CANBY: He has testified that the rule has since been abandoned.

Q. BY MR. CANBY: Was it a part of the ethics of either the national or state association that there not be competitive bidding?

A. This has a long history, going back some years.

The American Institute of CPA's did have a rule (35) against competitive bidding, and by agreement, as I understand it, that the Justice Department did eliminate the rule from their Code of Ethics. They, also, at the same time stated that as to what the states did would be entirely determined by state law.

The State of Arizona, up until this ruling, has maintained a competitive bidding rule; prohibition against it, and I guess I would have to correct my former testimony -- this is one departure from the rule of ethics that we have in Arizona, as compared with the American Institute, which I readily concede.

Q. What was the reason behind the

ethical prohibition on competitive bidding?

A. The basic reason is that we believe very strongly, and still do -- most of us in the profession -- I cannot speak for everybody -- that the quality of service will definitely suffer; the clients will also suffer, because the quality of service will go down.

Q. That is your view?

A. That is my view, and I am joined in that view and have been for seven years by at least the members of the Board of Accountancy and by many others in the profession.

As a matter of fact, sir, that view was held by the American Institute for many, many years.

(36) Q. I so understand.

Lastly, you do agree, don't you, there is a profit motive in the business of accounting, or the profession of accounting, as well as other motives?

A. I do not disagree with the statement that the profit motive exists, but that is not of a basic motive in public accounting. The basic motive is, frankly, service to the public.

MR. CANBY: I have no further questions.

MR. FRANK: I have no questions.

May the witness be excused?

THE CHAIRMAN: Well, wait just for a second, please.

For the record, it appears to me from examination of Bar Exhibit No. 8, which is the Rules and Regulations of the State Board of Accountancy that the rule to which the Attorney General's opinion, which has been marked Respondents' Exhibit 11 refers is Rule 9-E(6), which is captioned "Competitive Bids". Is that the rule which appears to have been stricken down by the Attorney General?

THE WITNESS: That's correct. Yes, Mr. Chairman.

THE CHAIRMAN: Could I ask a question of the witness, for clarification?

MR. FRANK: May I send that Exhibit out to be duplicated, or do you need it for your question?

(37) THE CHAIRMAN: No, I don't need it.

* * * *

EXAMINATION

By The Chairman:

Q. Mr. Davidson, are you generally familiar with the function of the community organization which is generally referred to as the Legal Aid Society?

A. Yes, in general.

Q. Are you familiar with what is known as the Lawyers Referral Service?

A. Yes, to some extent.

Q. As I understand it, the Legal Aid Society is an organization which attempts to provide for delivery of legal services to indigent persons, and the Lawyer Referral

Service is a service which purports to provide access to lawyers for potential clients who are not indigent and who are guaranteed the opportunity to have legal services at some kind of a stipulated initial consulting fee, with an arrangement for making agreements on compensation after the initial consultation.

Do you understand that?

A. Yes.

Q. Does the accountancy profession have any kind of an activity which is comparable either to Legal Aid or to Lawyer Referral that will make the services of the (38) profession available either to indigent or to persons who have no access to accountants?

A. I would say to a certain degree that is true. We have in our Arizona Society of CPA's a committee which lends aid to minority groups on a for-nothing basis. There is no charge, and various firms have

contributed the time of their people to efforts of this kind.

In addition, a great many of our charitable organizations have benefited from the services of CPA's at either no cost or a very low cost on the auditing or other standpoints.

As far as referrals go, we do not have a standard process of referrals. However, we do have an executive secretary, and I checked with him very recently -- like this morning -- and said, "How many calls do you receive?"

And he said, "Quite a few."

I said, "What do you do?"

He said, "I ask them basically what their problem is; where they are located, geographically, and we will give them the names of three firms to call, three accounting firms. Also, present them with a roster, which we have of all of the ones that are listed in the Board of Accountancy Di-

rectory."

We do have that type of referral.

(39) He also makes it clear that they should discuss the fee with the accounting firm before they do, and the flat question, check the quality of their service before they engage any services with them.

Q. The other question that I have is whether members of your profession, among other services, also provide tax advice and assist in the preparation of state and federal income tax returns?

A. Yes, sir.

Q. I think we are all generally familiar with the activities of an organization called H & R Block. Do they engage in furnishing tax advice and the preparation of income tax returns?

A. Yes, they do.

Q. Do they advertise?

A. They do.

Q. Are they certified public account-

ants?

A. They are not.

Q. If they were, in fact, CPA's, would that advertising be a violation of the Code of Professional Ethics?

A. Very definitely.

THE CHAIRMAN: That's all I have.

THE WITNESS: I'm hopeful, if I may say so, that we, in no way, as an accounting profession, would be (40) considered at the same level of H & R Block.

THE CHAIRMAN: I'm not going to draw any inferences as to which is at the higher level, but they are not equivalent; is that true?

THE WITNESS: Right.

THE CHAIRMAN: Thank you.

MR. FRANK: May Mr. Davidson be excused?

THE CHAIRMAN: You may be excused, and thank you very much for your assistance.

MR. FRANK: Mr. Canby and I are now

able to stipulate that the action of the House of Delegates is the official and binding action for the American Bar Association as to Exhibit 10.

THE CHAIRMAN: So, as of right now, Bar Exhibit No. 10 constitutes the final official, binding action of the American Bar Association?

MR. FRANK: That is correct.

THE CHAIRMAN: But it is not a part of the body of law of this state until such time, if any, as the Supreme Court incorporates it into their rule.

MR. FRANK: That is correct.

Right Mr. Canby?

MR. CANBY: Right.

MR. LEWIS: Mr. Chairman, may I be excused for a few (41) minutes?

(Mr. Lewis excused from the hearing room.)

* * * *

DEPOSITION OF BERNARD VAN O'STEEN, JR.

AND JOHN RICHARD BATES

* * * *

BERNARD VAN O'STEEN, JR., a Respondent, being sworn as a witness by the Chairman, was examined and testifies as follows:

JOHN RICHARD BATES, a Respondent, being sworn as a witness by the Chairman, was examined and testifies as follows:

THE CHAIRMAN: Now, the rule is you only speak when spoken to, so there isn't suddenly volunteering.

EXAMINATION

By Mr. Frank:

Q. Mr. O'Steen, would you give us your full name, for the record?

A. BY MR. O'STEEN: Bernard Van O'Steen, Jr.

Q. Mr. O'Steen, are you a member of the Arizona Bar?

A. BY MR. O'STEEN: I am.

Q. And a graduate of the ASU Law School?

A. BY MR. O'STEEN: Yes.

Q. What year?

A. BY MR. O'STEEN: 1972.

(42) Q. Are you engaged in the practice of law in this community?

A. BY MR. O'STEEN: I am.

Q. A member of a firm?

A. BY MR. O'STEEN: Yes.

Q. What is that firm?

A. BY MR. O'STEEN: Legal Clinic of Bates & O'Steen.

MR. FRANK: Now, I will turn, if I may, to Mr. Bates and bring him up to date.

Q. BY MR. FRANK: Mr. Bates, are you also a member of the Arizona Bar?

A. BY MR. BATES: Yes.

Q. Are you a graduate of ASU?

A. BY MR. BATES: Yes, I am.

Q. When did you graduate?

A. BY MR. BATES: 1972.

Q. Are you the Mr. Bates who is the member of the firm just described by Mr.

O'Steen?

A. BY MR. BATES: Yes, I am.

THE CHAIRMAN: Would you be kind enough to state your full name?

MR. FRANK: Thank you.

WITNESS BATES: John Richard Bates.

Q. BY MR. FRANK: Mr. O'Steen, did you or your firm, (43) in fact, cause the advertisement to be published, which is Exhibit No. 6 in this case?

A. BY MR. O'STEEN: Yes, we did.

Q. And you personally were aware of the publication in advance?

A. BY MR. O'STEEN: Yes.

Q. And you approved it?

A. BY MR. O'STEEN: Yes.

Q. Mr. Bates, were you also personally aware of the publication, and did you approve it?

A. BY MR. BATES: Yes.

Q. Mr. O'Steen, would you tell us, please, something about the nature of the

practice of your office?

Describe for us what you do.

A. BY MR. O'STEEN: In a good many ways, our office is like a traditional law office, in that we provide a range of general services of a legal nature to clients who contact us.

We differ perhaps somewhat from some other law firms --

Q. Let me do this: I believe I interrupted you there, because I'd first like to get a description of what the services are, and go into the differences between your clinic, as you call it, and a normal law office.

What are the services?

(44) A. BY MR. O'STEEN: We take cases in the following areas: Divorce and other domestic relations matter; adoptions, which may or may not be included in that first category; individual bankruptcies, wills; probates; change of name matters; personal

injury cases.

I should have included along with probate, the areas of guardianship and conservatorship, which are closely related.

We do some work in the consumer contract area of the law, and a small amount of real estate practice.

THE CHAIRMAN: No criminal practice?

WITNESS O'STEEN: No criminal practice.

Q. BY MR. FRANK: Mr. Bates, is that essentially an accurate description, or do you have anything to add?

A. BY MR. BATES: I believe that covers it.

Q. All right.

Mr. O'Steen, if, hypothetically, a person comes to you for a divorce and would like the names of the children changed in connection with that divorce, do you then handle both of those functions?

A. BY MR. O'STEEN: The names of the

children changed?

Q. Yes. Suppose, hypothetically, somebody comes in for a divorce and is going to have her own maiden name returned; let us suppose she has been married previously (45) and she has a child that has some name other than that of her maiden name; do you then get those names untangled if she asks it, and get those children's names changed?

A. BY MR. O'STEEN: Well, we are fully capable of providing both services. They cannot be done in the same proceedings, but to my recollection, I have never had a request of multiple services of that nature.

Q. But you are perfectly prepared to do that; services of that nature?

A. BY MR. O'STEEN: Yes, assuming there is a legal basis for it.

Q. Let's take the same kind of a divorce; do you, as a matter of routine,

offer the service of a will to anybody who gets a divorce, a new will?

A. BY MR. O'STEEN: No, we do not.

Q. Do you commonly do wills for the people for whom you get divorces?

A. BY MR. O'STEEN: Certainly not commonly.

Q. Do you ever do new wills for the people for whom you get divorces?

A. BY MR. O'STEEN: I would suspect that we do, but it happens so infrequently that I can't recall specifically of specific examples.

Q. But you have no rule against it?

A. BY MR. O'STEEN: No.

(46) Q. If, hypothetically, somebody got a divorce on Monday and asked you for a new will on Tuesday, and alas died on Friday, are you capable of providing probate service in that situation?

A. BY MR. O'STEEN: Yes, we are.

Q. You have no rule against that?

A. BY MR. O'STEEN: None.

Q. What is a legal clinic, as you envision it?

What does that term mean in your title?

A. BY MR. O'STEEN: Well, as I think I started to explain, in response to another question a few moments ago, the term "legal clinic" was adopted by us when we opened our practice, because we believe that it best describes what we are doing. I think unlike some other law firms, we made a conscious effort from the very beginning to extend legal services, quality legal services at the most reasonable fees possible to persons of moderate and low income; people who were not capable of qualifying under the financial guidelines of the Legal Aid Society, and therefore had traditionally had difficulty finding lawyers.

We incorporate a number of cost-

saving features into the practice in order to reduce costs, and thereby, pass along savings in the way of reduced fees in certain types of cases.

(47) Very briefly, the features of the clinic are --

Q. I wish you would describe them.

A. BY MR. O'STEEN: Each of the attorneys in the clinic specialize, and this permits an attorney to bring expertise to the client's problem at a minimum of effort and a most efficient way.

The clinic also employs and makes extensive use of paralegal or legal assistant personnel, who perform many of the functions that attorneys have traditionally done, but have not needed to do; functions which can be performed of equal competence by a non-lawyer personnel. Of course, they don't give legal advice and they don't represent clients in court.

Those are the two most important restrictions on their ability to work, but they do many other chores that attorneys in some other offices do.

THE CHAIRMAN: Could I ask for a clarification, Mr. O'Steen. Are there admitted lawyers in the clinic, other than yourself and Mr. Bates?

WITNESS O'STEEN: Until recently, we had the third lawyer, Mr. von Ammon. She has since left the clinic, and we are hopeful shortly to have another admitted lawyer to take her place, but at the present time there are only two of us.

THE CHAIRMAN: And you employ, as I understand it, (48) some nonprofessional people who provide certain kinds of supportive courses?

WITNESS O'STEEN: That's correct.

THE CHAIRMAN: How many are there of them?

WITNESS O'STEEN: Two and a half at

the present time.

THE CHAIRMAN: All right, thank you.

WITNESS O'STEEN: Now, those are people who function as -- or, a large part of their duties are what we would call paralegal duties. We also have other personnel, but they are not among that group we call legal assistants.

A. BY MR. O'STEEN: (Continuing) One of the most important features of our office, and it goes hand in hand with the use of legal assistants in this kind of practice is that we use -- our approach to the practice of law is one of a systems approach. Many tasks are standardized; techniques which are repetitive are put together in a carefully devised systems by the lawyers, and thereby, legal assistants can perform many of these functions that we have been talking about with good instructional material from lawyers and with periodic reviews by the lawyers,

in important steps along the way.

Various other methods of reducing overhead are used in the office. Clerical time is minimized, for example, by the use of printed legal forms, and by the use of automatic typewriter equipment.

(49) In addition, we don't maintain a large collection of law books. Attorneys do their research at institution of law libraries.

Probably what we consider perhaps the most important feature of the clinic is that a relatively low profit is made on each case.

Q. Mr. O'Steen, I'd like to take these in some detail, so that we really understand the distinction between a clinic, as you envision it, and simply a conventional law office.

Let me put, if I may, the illustration of this office, in which we are taking the testimony. The office has

attorneys who specialize almost entirely; uses paralegals to a great extent; uses, I believe, a systems approach, as you describe it, and uses automatic typewriters extensively; yet, I suppose no one would imagine that this was a legal clinic. You don't suppose that these ingredients make it one?

A. BY MR. O'STEEN: No, sir, I wouldn't say so.

Q. So that those are not essential elements of a legal clinic. At least, they don't define a legal clinic?

A. BY MR. O'STEEN: No, they in themselves don't define a legal clinic.

Q. What, then, are the precise factors which are peculiar to a quote: "legal clinic", which are not (50) common to countless other law offices in this state?

A. BY MR. O'STEEN: Well, first of all, I think your experience, Mr. Frank, insofar as the features you just mention-

ed to me that are used by this law firm are generally not employed by attorneys who handle the kind of cases that we handle; that is, a systems approach to practice; the use of legal assistants, and the like. Those are features that typically can only be used by large law firms who cater to an entirely different clientele.

Q. I want to be sure I understand it, and truly fairly, Mr. O'Steen. If I get what is the concept of the legal clinic, that is basically that you are appealing to low-income personnel, just above the Legal Aid level?

A. BY MR. O'STEEN: Well, low and middle income.

Q. What is the range of the income of the persons you serve?

A. BY MR. O'STEEN: Well, I can make an educated guess for you.

Q. Would you please?

A. BY MR. O'STEEN: From people on

welfare and other forms of public assistance, up to, I would say, very few of our clients probably have family incomes in excess of \$25,000.00 a year.

Q. So, it's from a low level to around \$25,000.00 is the (51) range; is that it?

A. BY MR. O'STEEN: Yes.

Q. If, hypothetically, someone in response to your advertisement felt that he would like those services, but he happened to have an income of \$50,000.00, would he be barred from availing himself of your services because of that fact?

A. BY MR. O'STEEN: Not if his legal problem was of the type we handle.

Q. Any member of the community could come to you; is that it?

A. BY MR. O'STEEN: Yes. We have no income restrictions.

Q. But, at least, you are agreed your goal is to service persons in the

income range you have described; is that it?

A. BY MR. O'STEEN: Yes, that's basically it.

Q. And the second element is that you seek to service them at the lowest feasible fee and small personal profit; is that correct?

A. BY MR. O'STEEN: Yes.

Q. Now, other than those things, is there really any significant difference between your office and really almost any other office?

A. BY MR. O'STEEN: Well, I think that's pretty (52) significant.

Q. It is. We respect it.

Is there anything else, or is that it?

A. BY MR. O'STEEN: Well, there are other smaller features, I think. The efforts to reduce overhead, which I mentioned, in our firm was accomplished by

those things; by minimizing clerical time and by minimizing the expense of a large library are significant, in the terms of the ability we have to reduce fees.

Q. Mr. O'Steen, is the term "legal clinic" a term of art in the legal community?

Is it commonly used in the literature?

A. BY MR. O'STEEN: It's beginning to be.

Q. Is there some publication to which we would go that we would find a regularly established definition?

A. BY MR. O'STEEN: I don't think so. I could give you a bibliography of articles that are published.

Q. Where did you get -- I'm sorry, I was interrupting. Please finish your answer.

A. BY MR. O'STEEN: I was going to say that the term is used widely now by members of the organized Bar in (53) many

areas, where legal clinics are being established by the members of the Bar.

You may know the ABA has a standing now on legal clinics, and will be instituting a pilot project on legal clinics in the very near future. So, the term has fairly wide acceptance, I think, in the legal community.

Q. But there is no particular reference to which you can send us for a definition; is that right?

A. BY MR. O'STEEN: No.

(Mr. Lewis enters the hearing room.)

Q. Mr. O'Steen, how long have you been in business?

A. BY MR. O'STEEN: As a legal clinic?

Q. At the practice as a legal clinic?

A. BY MR. O'STEEN: Two years, in March.

Q. Who would handle this business which you are doing in the community if you didn't handle it?

Do you have any opinion as to that?

A. BY MR. O'STEEN: Sure. I assume that other private lawyers would handle some of it. I suppose that the Legal Aid Society attorneys would handle some of it, and I suppose a good deal of it would be undone.

Q. Let's take, then, those things separately. Some of it, you say, is eligible for Legal Aid treatment?

A. BY MR. O'STEEN: Some of the clients who see us are eligible for Legal Aid.

(54) Q. If they went to Legal Aid, they'd be served for nothing; wouldn't they?

A. BY MR. O'STEEN: Yes.

Q. Nonetheless, you service them and take their money; don't you?

A. BY MR. O'STEEN: Not without informing them that Legal Aid is available to them.

In most cases, they already know us. I am thinking of the area of divorce, which is really the only other area that I know of, other than just purely consultation, which we serve people who are available for Legal Aid. They are informed when they contact Legal Aid there is a six-month waiting period to see a lawyer; some horrendous period.

Most of them are not willing to wait that period of time, and they seek out an attorney who will do the work at a low fee.

Q. But you, in every case where someone is eligible for Legal Aid advise them of that fact?

A. BY MR. O'STEEN: We don't make an inquiry to determine that, but if we sense that a person who comes to the office might be eligible for Legal Aid, I know that I explore that and I'm sure John does too. We call that to their

attention.

As you may know, both of our backgrounds is from (55) the Legal Aid Society.

Q. But this is when you sense; you don't ask if they could get Legal Aid Society somewhere else?

A. BY MR. O'STEEN: No, and I don't know where any other lawyer does that.

Q. And you are saying that the other category would be in other law offices, and you are undoubtedly competing for that work?

A. BY MR. O'STEEN: Exactly.

Q. And the other area are disputes which would never be litigated at all if it were not for you; is that correct?

A. BY MR. O'STEEN: Well, I'm not sure it's fair to categorize it as disputes, as the question categorizes them. I think they are legal matters that would be unresolved and unattended to.

Q. Let's take the matters in your ad. Take the matter of divorces. Do you believe that you are getting divorces for people who would otherwise not be getting divorces if your services were not available?

A. BY MR. O'STEEN: In some cases.

Q. Do you believe that you are getting bankruptcy discharges for people who would not otherwise get bankruptcy discharges were it not for your services?

A. BY MR. O'STEEN: Yes, in some cases.

(56) Q. Are you handling any personal injury matters for persons who would otherwise not be bringing personal injury claims were it not for your services?

A. BY MR. O'STEEN: Very few.

Q. Are there any?

A. BY MR. O'STEEN: Personal injury claims?

Q. Yes. That would not otherwise be litigated.

A. BY MR. O'STEEN: Yes, we have taken clients who have personal injury matters who have been turned away by three or four lawyers before they reached us, because the matter didn't seem to be profitable.

Q. Have you ever taken any personal injury matters which have not been turned away by anybody before it came to you?

A. BY MR. O'STEEN: Yes.

Q. In connection with your personal injury practice, you have noted that in your ad that information regarding other types of cases would be furnished on request.

Would you furnish them information about your personal injury services if the request were made?

A. BY MR. O'STEEN: Yes.

Q. Do you distribute cards for your

firm to people in hospitals who have had the misfortune to be in a personal injury?

A. BY MR. O'STEEN: Do you mean do we walk through (57) hospitals and knocking on stranger's doors?

Q. Precisely.

A. BY MR. O'STEEN: Absolutely not.

Q. Do you go to accidents, and at the scene of accidents give cards to the people who have had the misfortune of being in the accident?

A. BY MR. O'STEEN: No.

Q. Do you believe that you have the same First Amendment right, if you wish to do so, to go through the hospital or to give your card at the scene of accidents as you do to publish the ad which is Exhibit 6?

A. BY MR. O'STEEN: My answer to the question has to be that I really haven't formulated my own ideas about that type

of solicitation, that problem. I think that it may well be true that if tested that a lawyer had a constitutional right to engage in such solicitation.

I can tell you my personal feelings about it.

Q. I won't bring you into that. Mr. Canby can if he wishes. I simply want to understand what your opinion is about the proper function of solicitation of a legal clinic. It is my understanding that fundamentally it is the position of your office that you are free, under the anti-trust laws and under the First Amendment to publish Exhibit No. 6; is that correct?

A. BY MR. O'STEEN: Yes.

(58) Q. I wish to know whether it is also your view that you would be privileged to distribute cards in hospitals or go door to door, or to take fliers. I haven't asked you about that. Would you be free to have fliers distributed door

to door, announcing your service?

THE CHAIRMAN: Are you talking about handbills?

MR. FRANK: Handbills.

Q. BY MR. FRANK: Are you free to do that?

A. BY MR. O'STEEN: I'm sorry, I take no position to that.

THE CHAIRMAN: The witness has answered the question, Mr. Frank. Go to something else.

Q. BY MR. FRANK: You don't know.

Let me turn to Mr. Bates. Let me find out if you have a view on this subject.

Is it your understanding that you have a privilege under the antitrust laws and under the First Amendment, or either of them, regardless of the rules, to publish the ad which is Exhibit 6?

A. BY MR. BATES: Yes.

Q. Do you have an opinion as to

whether you are also privileged to distribute leaflets door to door, offering your services?

A. BY MR. BATES: I think I would answer it in the same fashion that my partner has on that. In other words, (59) I don't have an opinion which I feel confident in expressing at this moment.

Q. The same would be true of cards in hospitals or calling on the accident victims at the scene; is that correct?

A. BY MR. BATES: Yes.

Q. Mr. O'Steen, I notice that one of the services you offer is "Divorce or legal separation--uncontested (both spouses sign papers)".

My question is, what is an uncontested divorce?

A. BY MR. O'STEEN: A divorce in which both parties have fully settled the terms of their divorce, and -- well, I think that completes my answer.

Q. Well, let's take this up for a minute. When someone comes to your office and says, "I want a divorce", how do you find out from that person whether it is uncontested or not?

A. BY MR. O'STEEN: Well, typically, the inquiry is first made over the telephone, and one of our legal assistants handles those incoming calls, in order to determine whether the divorce is contested or uncontested.

Q. Explain that with some precision, would you please?

A. BY MR. O'STEEN: Yes. In inquiries made by the legal assistant, whether or not the terms have been (60) discussed with the adverse spouse, and whether or not complete agreement has been achieved on the important matters. If the person --

* * * *

THE CHAIRMAN: Mr. Bates, I'd like to

to clarify something. You referred to Mr. O'Steen as your partner. Is it, in fact, a partnership or a professional corporation?

WITNESS BATES: It's a partnership.

Q. BY MR. FRANK: The question which is before you, Mr. O'Steen, was: Just what is it that the person on the phone says to inquiring party about coming in, and so on?

A. BY MR. O'STEEN: Just a brief inquiry is made to determine whether or not the spouses have discussed the important terms of their divorce, and come to an (61) agreement on those terms.

If the caller answers in the affirmative, then an appointment is made, at which time the client sees an attorney.

Q. Let us suppose that -- we will make the caller she -- let us suppose she says, "No." Then, what does your telephone clerk say?

A. BY MR. O'STEEN: "No, we have not

come to an agreement on the terms of the divorce"?

Q. That's right.

A. BY MR. O'STEEN: They are referred to the Maricopa County Lawyer Referral Service.

Q. In short, you do not accept any contested divorces; is that right?

A. BY MR. O'STEEN: Not any longer. We did at one time. We don't do it now.

Q. What happens when the parties -- well, correction -- then, who comes in to see you?

You say the next step is an appointment with the attorney. Who comes in?

A. BY MR. O'STEEN: The spouse who called us.

Q. And the other spouse does not come in?

A. BY MR. O'STEEN: Sometimes both spouses come in. We make it clear from the beginning that we will represent one

of them, generally the caller, and that we (62) sometimes ask a nonclient spouse to step outside of the office and wait in the reception room while we take the information down from the client spouse.

Q. But you sometimes do that. Do you always do that?

A. BY MR. O'STEEN: No.

Q. How do you decide when to do it and when not to?

A. BY MR. O'STEEN: I think it's just a gut feeling that I have after several years working with it. We always make it clear to them that we will be counsel for one spouse, and the other spouse will be the adverse party, and that if there are any doubts or hesitations at all on the terms of the divorce, then we encourage both of them to go out and seek independent counsel.

Q. Let me take, hypothetically, an instance in which you allow both of them to stay in the room, and let us suppose that

they have a modest bit of property. This happens sometimes, doesn't it?

I'll get specific in a second as to the types of property, but not all of them are penniless; are they?

A. BY MR. O'STEEN: No.

Q. So that let's suppose, hypothetically that they have a house in which they own a small equity; a thoroughly used car and a number of pieces of personal property and furniture in the house; a refrigerator; that kind of thing. Is that a fairly typical case?

(63) A. BY MR. O'STEEN: I would say that's typical.

Q. Does it ever happen that when they come in to see you they, in fact, thought that everything had been ironed out, but they are not used to thinking about these things, and, in fact, it wasn't ironed out, and they really hadn't thought about what to do with the car and what to do with the house

and who was to pay last year's taxes, and who was to pay the outstanding bills, and so on. Do these matters ever emerge in a conversation with the two people with you?

A. BY MR. O'STEEN: Yes.

Q. What happens in those circumstances?

A. BY MR. O'STEEN: We stop the interview; inform the parties that formerly we told them there were only two ways we could function, either, one, if they came to an agreement with us with all terms; we could incorporate them into the right pleadings and handle the case for them or we could represent the party, the client in the contested divorce, and the other would have to go elsewhere.

In the case where both of them are sitting in the office, that is impractical, and we simply tell them they will have to both seek independent counsel elsewhere, if they don't resolve the dispute.

Q. Do you help them resolve the dis-

pute?

(64) A. BY MR. O'STEEN: No.

Q. Do you discuss with them the fact of the car and the refrigerator are about a push away and maybe they could take, each, one of them; that kind of thing?

A. BY MR. O'STEEN: I don't think I have ever done that.

I do give certain types of information at times. Typically, one of the things that people do not consider when they think about the divorce is the question whether or not the life insurance ought to be maintained on the life of the noncustodial parent in the event to support the parent if something happens to the parent on the child support. That commonly is something that is not considered by the people involved in the divorce. We discuss that when they come in.

The response is, "Well, gosh, we haven't thought about that."

I will explain to them the reason they

might want to consider such protection, and tell them it's up to them to decide whether or not they want it. But we are fully capable of obtaining an order of court and incorporate it in a decree or Decree of Dissolution to obtain such protection.

Q. But you never advise them as to how they should distribute the property?

(65) A. BY MR. O'STEEN: No.

Q. No matter how slight, if there is no contest; they haven't thought about it?

A. BY MR. O'STEEN: That's one of the things--it's very rare that a couple would come in to the office to seek assistance in the uncontested divorce, and they haven't decided how the property is going to be divided. In most cases they come into the office, and it's two feet long. They include the doilies on the sofa -- that much detail. So, that specific problem doesn't come up very often.

Q. What do you do with those lists?

A. BY MR. O'STEEN: The very long lists?

Q. Yes.

A. BY MR. O'STEEN: We do one of two things. If they feel strongly about it, we incorporate all that into the pleadings. I will inform them that if they have an informal agreement as to the division of such property, and it has already been exchanged, then there is no reason to recite all of that.

Q. How about the taxes, does it commonly happen that they haven't thought about accrued income taxes, such like insurance?

A. BY MR. O'STEEN: Are you talking about tax liability or tax refunds that they have?

(66) Q. Either way, that they haven't thought about; principally, the liability.

Let's suppose money has been earned by the community during the year, and they

simply have not focused on the fact that there are taxes due.

A. BY MR. O'STEEN: We inquire about that. Most of them have payroll deductions in excess of their tax liability, and most everyone we deal with has a refund coming, and so that is, of course, an item of property in which there is a combined interest, and most of the cases it is to be considered in dividing.

Q. Now, on this galaxy of variations that we have been speaking about, do these take a small amount of time?

A. BY MR. O'STEEN: No.

Q. What is the range that is the quickest or longest?

A. BY MR. O'STEEN: Are you talking about the attorney's time or combined staff time?

Q. The attorney's time. What is the shortest or the longest?

A. BY MR. O'STEEN: Including the dis-

solution hearing; including the total matter?

Q. Yes, we'll take the totality of the matter, short to long; what can it be?

A. BY MR. O'STEEN: I would say the short probably (67) requires about an hour and a half of attorney time, and the longest, perhaps three hours of attorney time.

Q. And the fee of \$175.00 applies (sic) to the shortest and the longest, and all in between; is that correct?

A. BY MR. O'STEEN: Yes.

Q. Without regard to the amount of property which is involved; isn't that correct?

A. BY MR. O'STEEN: That's right.

Q. Now, we have spoken earlier about the fact that you are likely to do wills for the people, or at least recommend them to them upon the conclusion of a divorce, when they become single persons again.

Do you recall that part of our discussion?

A. BY MR. O'STEEN: Yes, I recall that, saying that we don't do that often.

Q. But you do it from time to time?

A. BY MR. O'STEEN: Rarely. Occasionally.

Q. All right. If you do that, what do you charge for the wills?

A. BY MR. O'STEEN: \$30 for a simple will for one spouse; 15 for the spouse reciprocal.

Q. But I'm speaking now of a recently divorced person?

A. BY MR. O'STEEN: You are talking about an individual?

(68) Q. Individual.

A. BY MR. O'STEEN: \$30.

Q. I notice in the ad that you deal with changes of names. For the \$95, what do you do for them?

A. BY MR. O'STEEN: Have their name legally changed.

Do you want to know the steps?

Q. Just a word, how do you do that?

A. BY MR. O'STEEN: Well, the client comes in for an interview; the pleadings are prepared. That is, a Petition for Change of Name. It's then filed with the court. If notice seems to be required in a case, then notice is given in the manner prescribed by law. A hearing date is set by a legal assistant; a letter goes out to the client and informing them of the hearing date and asking that they meet us a few minutes early at the court house.

The lawyer then meets the client at the court house; conducts the hearing; takes --

Q. Mr. O'Steen, I'll ask you to assume for this hypothetical that the cases (sic) is one of a person in which no notice would be appropriate. It's a person in the community who is alone and simply wishes, for whatever reason, to make a change of his name, but there is no person to whom any notice would pro-

bably be sent. Could we assume such a case? That's not abnormal?

A. BY MR. O'STEEN: No. That's most of the cases; (69) have no notice requirement.

Q. Now, in that case, would you tell us with some precision, how that persons (sic) gets to you? Calls in for an appointment?

A. BY MR. O'STEEN: Yes.

Q. And gets one of the clerks?

A. BY MR. O'STEEN: Well, in this case, the receptionist -- if a person calls in and says, "I want to see an attorney about a change of name", the appointment is simply made by the receptionist at that time. The legal assistant isn't used in the appointment-making process and in the name change cases.

Q. The receptionist makes an appointment, and this person comes in to see you, hypothetically?

A. BY MR. O'STEEN: Yes.

Q. Would you tell us, please, what do

you say and what does this person say in the interview? Give us an outline of it.

A. BY MR. O'STEEN: I have an information sheet, which I don't have in front of me, which has been carefully devised to see that we get all of the information we have to have in order to prepare the pleadings and conduct the hearing. I take the necessary information down on the information sheet; discuss the fee arrangements of it with the client; inform the client (70) that a pleadings (sic) will be ready for signature on a day generally two or three days thereafter, then we make an appointment for the client to come back and sign the pleadings.

Q. That is the totality of your conversation with the client at that time?

A. BY MR. O'STEEN: Well, yes. I gave you a very abbreviated indication of what happens.

Q. Well, I am winding up my examination now, and we'll tax the patience of the panel.

Just tell me everything that happens on that conference. I want to know about it.

A. BY MR. O'STEEN: The person says, "I want a name change.

I will ask them, "Why? What's the basis of your desire to have the name change?

Frequently, what has happened is a child may have been raised by a step-father and has now reached adulthood; over the past has used the surname of the step-father on many records and with many associates, and therefore, some confusion exists over the use of two surnames on various records, and that, of course, is a sound and justifiable basis for legal change in name.

So, I note the reason for the request in change in name on the form. I take down all the additional data. (71) I cannot remember all the data that's required in one of those cases. It's on the information sheet.

The other things are substantially as

I related them before. We discussed fee arrangements. Our usual requirement is that we require one-half of the fee prior to preparation of the pleadings, and the balance prior to the filing. That's discussed. If other arrangements have to be made, we discuss it; come to an agreement, and notation on the fee arrangement is made on the information sheet.

The client is then escorted out to the receptionist; an appointment is made for the client to return and sign papers.

Q. Mr. O'Steen, do you ever take up with a client whether he needs a lawyer at all for this purpose?

A. BY MR. O'STEEN: For a change of name?

Q. Yes.

A. BY MR. O'STEEN: No. Wait, excuse me, Mr. Frank. I'll have to change that answer. Yes, I do on occasion, because when I find that the name change is one which does

not require the involvement of the Superior Court and can be handled through the Department of Vital Statistics, through the correction of a record, something of that sort, I frequently will send the client on his way with how to deal with the Department of Vital Statistics.

(72) Q. But isn't it true that nothing in our law requires the person to have an attorney to get the name change?

In the Superior Court, I'm told by the clerk that something like three out of 10 of the name changes are handled pro se or pro per, rather. Are you acquainted with the fact that name changes can commonly be obtained by individuals without the intervention of counsel?

A. BY MR. O'STEEN: I'm aware of the fact that it's done. I don't know how competently it's handled, and furthermore, it's not my job to inform a prospective client that he needn't employ a lawyer to handle

his work. Furthermore, there are no readily available forms or instructions for people who wish to do that kind of work themselves.

MR. FRANK: May I consult my co-counsel?

THE CHAIRMAN: Yes, sir, you may.

(Discussion off the record between Mr. Frank and Mr. Lewis.)

MR. FRANK: I have no further questions of these two witnesses.

MR. CANBY: You have other witnesses to put on?

MR. FRANK: I have one, Mr. Arnold. I can put him on or you can call them, as you wish.

MR. CANBY: I have a few questions that I'd like to (73) ask now, then perhaps I can recall them as part of my case.

* * * *

EXAMINATION

BY MR. CANBY:

Q. Mr. O'Steen, what do you do if some

body comes to your office with a malpractice case, medical malpractice, blotched spinal operation?

A. BY MR. O'STEEN: We don't take them.

Q. Where do you send them?

A. BY MR. O'STEEN: Lawyers Referral Service of the County Bar Association.

Q. You mentioned another attorney had been in your office. Did that attorney depart before this advertisement that's the subject of this proceeding was placed?

A. BY MR. O'STEEN: Yes.

Q. And you had no other attorney working with you at that time, did you?

A. BY MR. O'STEEN: No.

Q. You said that each attorney specializes in your clinic. Are you speaking of the different specialties between you and Mr. Bates?

A. BY MR. O'STEEN: Yes.

Q. Are you also speaking of the fact that you confine your practice, as a partner-

ship?

(74) A. BY MR. O'STEEN: That, also, yes.

Q. You refer to the printed forms that you use. Are those purchased from a stationery store?

A. BY MR. O'STEEN: We purchase some printed forms from the commercial outlets that market them, but we found very early in the going that most of them were not very well done; very unprofessional, and for that reason we have devised a good many printed forms of our own, and we use them regularly in our practice.

Q. Did you ever keep track of how much time you put into creating your own forms, your own systems and things like that?

A. BY MR. O'STEEN: We haven't kept track of it, but it will never pay. It's incredible hours of time in devising these systems.

Q. To your knowledge, does the Legal

Aid Society now take all divorce cases requested by clients who meet their income restrictions, their income qualifications?

A. BY MR. O'STEEN: No. I understand they have narrowed their guidelines a great deal, in terms of categorical limitations on the types of cases they take. I don't fully understand what those are.

Q. I don't think you had time to explain what your personal reaction was to giving out cards in hospitals or at the scene of accidents to people who had been hit.

(75) What are your personal reactions to that?

A. BY MR. O'STEEN: Well, my personal feeling about that is I don't like it. That sort of thing is undignified and unprofessional and does not serve the public interest, in my opinion. Therefore, I'm not in favor of it, but I hasten to add that that's not a position on the law, it's simply a personal reaction to that type of practice.

Q. Does part of your reaction have anything to do with the fact that the victim at the accident is likely to be in some sort of emotional reaction or physical disarray?

A. BY MR. O'STEEN: That certainly adds good reason for forbidding that type of practice.

Q. Before you placed that advertisement, did you spend any time in discussion or study between the two of you regarding your right to place that ad under the First Amendment or the antitrust laws?

A. BY MR. O'STEEN: Yes, we did, considerable time.

Q. Did you devote any discussion to the question of handbilling?

A. BY MR. O'STEEN: Leafleting of the type that Mr. Frank suggested?

Q. Yes, going door to door with leaflets.

A. BY MR. O'STEEN: No, we didn't discuss that.

(76) Q. You said that you always ask about life insurance in divorce proceedings, about the possibility of life insurance?

A. BY MR. O'STEEN: Yes.

Q. Is that required by any of your checklists?

A. BY MR. O'STEEN: Sure. We incorporated that on the standard divorce questionnaire, the information sheet, so that when an attorney obtains the information necessary to process a divorce, one of the questions which must be asked is: Do you have an agreement on that question, that issue?

Q. Divorces or dissolutions can be handled pro per, can't they?

A. BY MR. O'STEEN: They can, and many of them are.

Q. Do you have any idea how many are, percentage?

A. BY MR. O'STEEN: I could tell you what Commissioner Tom Novak has told me, if there is no objection.

THE COMMISSIONER: That's quite all right.

A. BY MR. O'STEEN: (Continuing) Something over 50 percent of the divorce filings in Maricopa County are pro per.

Q. BY MR. CANBY: Contested and uncontested?

A. BY MR. O'STEEN: That's my understanding, 50 percent of the total divorce filings.

(77) MR. CANBY: That's all of the questions I have that related to the subject of Mr. Frank's examination. There are a few unrelated subjects I'd like to reserve the right to take up with these witnesses.

MR. FRANK: So stipulated.

THE CHAIRMAN: Mr. Frank, any recross?

MR. FRANK: No.

THE CHAIRMAN: I have a question or two, if you don't mind, gentlemen?

* * * *

EXAMINATION

BY THE CHAIRMAN:

Q. First, do you, Mr. O'Steen, negotiate fees with clients if someone comes in and says, "A hundred and a quarter is too much for contested, will you take \$85?"

A. BY MR. O'STEEN: We don't often negotiate fees. On occasion, under special circumstances in an individual case, we might make a decision to reduce a fee or charge a fee slightly lower than our typical fee for that type of case. As a general rule, we don't negotiate on fees.

Q. Basically, you have what might be called a catalog price for service?

A. BY MR. O'STEEN: You might call it that.

Q. Would your answer be the same, Mr. Bates?

A. BY MR. BATES: Yes, it would.

(78) Q. The second one that I'd like to ask, and it might be difficult to answer, but I think is perhaps at the heart of

the whole inquiry: Mr. O'Steen, can you tell us, if you can articulate it, the motive or motives that you had for placing the advertisement, in any order of priority that you think is appropriate?

A. BY MR. O'STEEN: Well, the obvious one is to attract clients.

Q. And that is for the purpose of maximizing your income; is that true?

A. BY MR. O'STEEN: No, I think that's probably an unfair statement.

Q. I don't wish to suggest that there is anything immoral about maximizing your income, and it was not intended to be a biased question, or that it would be given anything other than the neutral consideration, and therefore, I do not regard it as unfair. My question, basically, is whether one of the motives that your clinic had in placing the advertisement was to maximize your income opportunity?

A. BY MR. O'STEEN: I'm bothered a

little by the term "maximize income opportunity". It was really a question of survival of this clinic and this type of operation. Had I been primarily motivated by maximizing my income, I would have applied for a job with your firm (79) or Mr. Frank's firm, although I probably would not have been offered a job. I would have done something like that.

I don't mind confessing to you that this has not been a terribly profitable operation up to this point, but we think it can be made profitable, profitable that attorneys can earn reasonable incomes doing this type of work, and if that doesn't happen this clinic concept will not survive. We have to be committed to the idea that lawyers can make reasonable incomes from that type of work, but basically, it was a question of income at that point.

Q. What you are saying, the systems approach, as you have described, is not economi-

cally viable unless it can rely upon substantial volume; is that true?

A. BY MR. O'STEEN: Precisely.

Q. Now, among your motives, would you say that at least in part you were moved by a desire to have a better system of delivery of legal services to persons who were in need of legal services, who otherwise might not avail themselves of legal services:

A. BY MR. O'STEEN: If I understand the question, you are asking me if that was one of our motives in doing this.

Q. In placing the advertisement.

A. BY MR. O'STEEN: Yes, it was.

Q. It was.

Do you think that you could accomplish the same (80) objective without quoting prices for services in the advertisement?

A. BY MR. O'STEEN: No, because I think price information is absolutely essential to an intelligent decision by a person on the selection of a lawyer.

Q. Is it your judgment that it would generate healthy and constructive competition to the benefit of the consuming public if multiple competitive advertisements were placed in the media; each one attempting to offer a comparable service at a lower price?

A. BY MR. O'STEEN: Yes.

Q. And you would not think that that kind of competitive advertising might motivate the individual clinic or practitioner to cut the quality of service in order to be able to reduce the price?

A. BY MR. O'STEEN: Well, I should hope not. That has not happened in our practice, and at the risk of sounding boastful, I think, if anything, the careful development of the systems approach that we have has caused the quality of the work done in our office to be second to none anywhere in the state.

I think if lawyers began to cut the quality of their service, that's another problem, and the Bar Associations are perfectly free to do,

and capable of dealing with that problem. That sort of thing happens (81) today. All lawyers are not equally competent, and the Bar Association will have to learn to grapple with that, I think, but, to me, is absolutely clear that high-quality service can be done and can be rendered at a rate below the prevailing rates if price advertising is permitted.

THE CHAIRMAN: Does anyone have any further questions?

MR. FRANK: One.

* * * *

EXAMINATION

BY MR. FRANK:

Q. One thing, Mr. O'Steen, that I should have taken up earlier; I think it should be on the record. I think it's fair to say that in putting in this ad, you and your partner have not proceeded defiantly or either contemptuously by the action on your part towards the Bar or the Supreme Court, and by stipulation of your clients it has been agreed that you

would not advertise further pending reasonably rapid disposition of this matter; essentially what you have done is create a test case to determine whether you can do this or not? Isn't that about right?

A. BY MR. O'STEEN: That's right. We don't want to be accused of causing frivolous litigation, and that's not (82) what we are doing.

We did think that what we did was essential to the survival of this concept, but it is true that it in no way was done with any disrespect or contempt for the State Bar or the Supreme Court. We are delighted the issue being so well aired.

MR. FRANK: I will now come back to this when you consider this, or if you should at some later time, when the Supreme Court, the problem of penalties. So I do know this has been a one shot, and it has been agreed that there will not be further advertising pending a reasonably speedy disposition of

the matter.

Mr. Canby, is that right?

MR. CANBY: Yes, that's our intention.

I don't recall stipulating.

THE CHAIRMAN: It is clearly understood, however, that the Respondents acknowledge and admit, for the purpose of this proceeding, that the placing of the advertisement constituted a violation of a rule of professional conduct promulgated by the Supreme Court of this state. Is that not true?

MR. CANBY: That's not only true, and is admitted in our Answer, with the reservation that we attack the validity of the rule. What you say is true.

(83) THE CHAIRMAN: Do you agree with that, Mr. O'Steen?

WITNESS O'STEEN: Yes, sir.

THE CHAIRMAN: Mr. Bates?

WITNESS BATES: Yes, sir.

MR. FRANK: Nothing further.

* * * *

EXAMINATION

BY MR. CANBY:

Q. One question: The Chairman asked you, Mr. O'Steen, one question, something like that: You advertised, then, because your clinic was not economically viable without it?

A. BY MR. O'STEEN: I think that was my response.

THE CHAIRMAN: The question was "not economically viable without a substantial volume of business to treat with the systems concept."

Q. BY MR. CANBY: I would add, at those prices, or at low prices; is that correct?

A. BY MR. O'STEEN: That's correct. I was reading that into the question.

Q. I was trying to see what was incorporated in your answer. Yes.

A. BY MR. O'STEEN: Yes. The fees we charge cause us to know that perhaps --

perhaps I should start over and try to rephrase this.

(84) Yes, it is true that it was not economically viable for the clinic to operate at the fees charged for various services without communication of price information in the form we chose to do it.

Q. To increase volume?

A. BY MR. O'STEEN: In order to increase volume.

MR. CANBY: I have no further questions.

* * * *

EXAMINATION

BY THE CHAIRMAN:

Q. Have you ever made an estimate as to the number of pieces of business that you have to do in a day, week or month in order to be able to break even?

A. BY MR. O'STEEN: We know what dollar volume we have to gross in order to break even.

Q. Do you know what your gross dollar

volume is that is necessary to break even?
Can you state it?

A. BY MR. O'STEEN: I think Mr. Bates has that.

Q. Mr. Bates, can you answer that question?

A. BY MR. BATES: The last time we looked into it was several months ago, and there have been several changes in the firm in the use of personnel and in the use of automatic typewriting equipment.

Do you want a figure? Is that what you are asking?

(85) Q. I am interested in a figure, yes.

A. BY MR. BATES: I would estimate between \$250 and \$300 a day.

Q. Between \$250 and \$300 a day gross fees received?

A. BY MR. BATES: Yes.

Q. Do you maintain any time records for your time?

A. BY MR. BATES: In cases where we normally keep time records, yes.

Q. But there are certain cases in which you do not keep time records?

A. BY MR. BATES: We did initially, to find out how much time was being typically invested in standard cases, and we took an average but we do not keep time records of every case that we handle.

Q. Do your paralegals keep time records?

A. BY MR. BATES: In our hourly rate cases, yes.

Q. Do you have hourly rate cases?

A. BY MR. BATES: Yes.

Q. Do you have some matters that you do not charge for a flat fee?

A. BY MR. BATES: Yes, that's correct.

Q. Would you be willing to tell the Committee what your hourly rates are?

A. BY MR. BATES: Yes. It's \$40 an hour.

Q. For the lawyers?

(86) A. BY MR. BATES: For the lawyers.

Q. Do you charge on an hourly basis for your legal assistants?

A. BY MR. BATES: That's \$20.

Q. Is the \$40 rate the same for both you and Mr. O'Steen?

A. BY MR. BATES: Yes.

THE CHAIRMAN: That's all I have.

MR. FRANK: Nothing further.

MR. CANBY: Nothing further. I only have a short few questions left, but I don't think they'd logically come now.

(Discussion off the record.)

(Recess taken.)

* * * *

JAMES L. JONES, being sworn as a witness by the Chairman, was examined and testifies as follows:

MR. CANBY: This is a defense witness being called out of turn.

EXAMINATION

BY MR. CANBY:

Q. Mr. Jones, would you please state your

full (87) name and address?

A. My name is James L. Jones. I live at 6821 North 8th Avenue, Phoenix.

Q. You have some connection, haven't you, with the American Association of Retired Persons?

A. I do.

Q. What is that position?

A. I am associated with the Phoenix Chapter No. 41, and act on the Board of Directors, and as a Legislative Chairman of this Committee.

Q. How many members has your Chapter?

A. The Chapter 41 has about 700 members.

Q. I see. Statewide, there are how many in the Association?

A. Statewide, there are approximately 118,000 members of AARP at the present time.

Q. In your capacity as a director and legislative liaison and as any other capacity you have, do you have considerable contact with the membership of your organization?

A. I do.

Q. Are they all retired persons?

A. No, they are not all retired persons.

The membership is open to those fifty-five years of age and older.

(88) Q. Do you have any general estimate of what percentage? Is the majority of them retired?

A. Oh, yes. I'd say at least 80 percent are retired.

Q. In your contact with these members, do you have any general knowledge of the economic condition of the members, generally or of specific members?

A. I would say, generally, they are in the lower economic spector of our population.

Q. Do the retired members of your organization tend to be on fixed incomes?

A. Yes, they do.

Q. Are you aware whether or not the members of your organization, with whom you are acquainted, have need or have had occasion to

need legal services?

A. Yes, they do. They do have need of legal services.

Q. How do they find that out?

A. Well, we have a Consumer Affairs Committee, and we make studies of this sort of thing; consultation with various members, and offer services, such as income tax preparation services and so forth to our membership.

Q. Have you ever had occasion to advise members of your organization who had questions about obtaining legal services?

A. Yes, I have.

(89) Q. What is the nature of that advice?

MR. FRANK: Could I have foundation? What kind of legal services are we talking about?

MR. CANBY: Let's ask that.

Q. BY MR. CANBY: What kind of legal services?

A. I think the legal services are the same as any group of citizens, they would have. I don't think they are peculiar at all, that this is a group mainly of retired persons.

Most of us, or many of us are still active in businesses and in social affairs, so I don't think the legal services would be any different than you'd find in the cross section of the public at large.

Q. Have you discussed the obtaining of legal service with people, for instance, who wanted to get a divorce, or a will?

A. A will, yes. Divorce, no.

Q. Possibly probate proceedings; someone had died?

A. We took a very active interest in the probate bill that was before the legislature in the session a couple of years ago.

Q. What advice do you give your members if they ask you how to obtain legal services?

A. Well, we don't recommend any individual attorney or send them to any firm of attorneys,

but we do suggest (90) when they do contact an attorney that they seek to the best of their ability to get an estimate of charges and be sure that they understand what the expense is going to involve.

Q. Showing you Bar Exhibit No. 6, this is an advertisement that appeared in the "Arizona Republic". In your opinion, would that advertisement be of assistance to your members in obtaining legal services?

MR. FRANK: Objection.

May I ask a question on voir dire?

THE CHAIRMAN: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. FRANK:

Q. Mr. Jones -- it's Jones, is it?

A. Correct.

Q. Mr. Jones, you have testified a moment ago that you have not had occasion to counsel with your members concerning divorces and legal services. Is that what you just told us?

A. I said that I personally have never been called upon to discuss that type.

Q. Right. Secondly, have you ever been called upon to discuss bankruptcy with the members of your organization, individually?

(91) A. I have not.

Q. Have you ever been called upon by any of them to advise them concerning changes of their names?

A. No, I have not.

MR. FRANK: I will not object, Mr. Chairman, because we have agreed we will make no objections, but I want the voir dire to stand as going to the weight of this evidence.

THE CHAIRMAN: Yes, it may.

I'd like to have the question reread to Mr. Jones, and I'd like to have him think about it and give an answer.

(Question read by reporter.)

A. I think it would be.

EXAMINATION (CONTINUED)

BY MR. CANBY:

Q. Why?

A. For the simple reason that it places some basis of legal cost on the specially mentioned matters, and it also has a statement here, "Information regarding other types of cases..." would be "...furnished on request", and I think the big difficulty in the minds of most people seeking legal services is what is the basis of cost, and if you can find a clear cut statement in this, it seems (92) to me it would be helpful.

MR. CANBY: I have no further questions.

* * * *

EXAMINATION

BY MR. FRANK:

Q. Mr. Jones, who was the last member of your association who consulted you on a need for legal services?

A. Are you expecting me to give you a name?

THE CHAIRMAN: The question calls for a

name. You may say that you don't know, if you don't know.

A. (Continuing) I'm not sure that I could recall the name of the individual.

Q. BY MR. FRANK: When did that happen?

A. I'd say about two weeks ago.

Q. What was the last one prior to that?

A. Oh, maybe a week before that.

Q. What was the nature of those services in those two instances?

A. These were problems involving traffic cases and income tax matters.

Q. Are most of the inquiries that come to you things which would involve either petty criminal offenses, such as traffic or income tax? Is that the weight of them?

A. No, I don't think that would be the case.

(93) Q. Would you give us a description of what the others are?

A. Well, I would have to take some

time to prepare a list like that.

As I said, I think the range would be the same range of legal problems that confront any of society.

Q. But you have nothing specific at this minute?

A. I didn't come prepared to recite a list of items of that character.

MR. ROBINETTE: Could I have one question?

THE CHAIRMAN: Of course, Mr. Robinette.

Mr. Robinette is one of the members of the Committee who is hearing the testimony.

EXAMINATION

BY MR. ROBINETTE:

Q. Mr. Jones, you said you advised your friends and association, very properly so, that if they see a lawyer they should make inquiry as to what the nature of the fees would be and what it's going to cost them. I believe that's your testimony?

A. That's right.

Q. Have any of them ever told you that

when they consulted the lawyer, the lawyer refused to discuss fees with them?

(94) A. No, they had not said that to be the case, but it has been my experience that some of these same people have been unhappy with the results of being told that the cost would be one thing, and finding out that they were substantially more than they had been told they would be.

Q. Of course, you don't know of your own knowledge whether these prices listed in the Exhibit that's been displayed to you are higher or lower than the going rates?

A. I do not.

Q. Among lawyers, generally?

A. I do not.

MR. ROBINETTE: That's all.

EXAMINATION

BY THE CHAIRMAN:

Q. Could I inquire, Mr. Jones, are you aware of a service which is implemented by the Maricopa County Bar Association called

the Lawyer Referral Service?

A. I am. We have availed ourselves of an expert from your Lawyers Referral group that appeared on a program before our monthly meeting about two years ago.

Q. When members of your association inquire of you from time to time concerning how they would go about getting the services of an attorney, do you recommend (95) that they get in touch with the Maricopa County Lawyers Referral Service?

A. We do not?

Q. Can you tell us why you do not?

A. The experience that we have had with that has not been very good.

Q. In respect to the quality of legal services or what?

A. I think the results that I have known about have indicated a rather lack of substantial interest on the part of the attorney or attorneys to whom they were sent to; and after all, for a \$10 fee you couldn't

expect to get too much, probably.

Q. This kind of an experience has been reported back to you from people who have gone to the Lawyers Referral Service?

A. Right.

THE CHAIRMAN: All right. Thank you.

MR. FRANK: No questions.

MR. CANBY: No questions. Thank you very much, Mr. Jones.

THE WITNESS: Thank you very much.

THE CHAIRMAN: Mr. Jones, we appreciate very much your taking your time to be of help to us, and you may be excused.

(96) THE WITNESS: Thank you.

(Witness excused.)

MR. FRANK: Mr. Chairman, I present Mr. Arnold. Could he be sworn, please.

* * * *

RICHARD M. ARNOLD being sworn as a witness by the Chairman, was examined and testifies as follows:

EXAMINATION

BY MR. FRANK

Q. Would you state your name for the record?

A. Richard M. Arnold.

Q. Mr. Arnold, you are a member of a firm of architects. Have you given the name of that firm to the reporter during the recess?

A. No.

THE CHAIRMAN: Would you like to do it now?

MR. FRANK: I'm going to hand it to her, because of the spelling.

THE WITNESS: It's Guiry, Srnka, Arnold & Sprinkle.

Q. BY MR. FRANK: Mr. Arnold, how long have you been an architect?

A. Since 1956.

Q. Is there a national association of architects?

(97) A. The American Institute of Architects.

Q. Are you a member of that?

A. I am.

Q. Is there a state association of architects?

A. Yes.

Q. What is that?

A. Arizona Society of Architects.

Q. In addition to that state society, are there local Chapters?

A. There is a Central Arizona Chapter and a Southern Arizona Chapter.

Q. Mr. Arnold, the national organization has, I believe, a post of high professional honor for some limited number of architects known as Fellows. Do I have the word correct?

A. Correct.

Q. Are you a Fellow of the American Institute of Architects?

A. Yes, I am.

Q. How many of those are there in the State of Arizona?

A. I believe there are 15.

Q. What is the general qualification of a Fellow? How does one become a Fellow?

A. Through service to the profession and to the (98) community.

Q. In?

A. Advancing architecture.

Q. Of service to the profession, have you held any offices in more than the Arizona Chapter?

A. All of them.

Q. Have you held any offices in the state association?

A. I was president several years ago.

Q. Mr. Arnold, in the course of your work--

MR. FRANK: May we stipulate that Mr. Arnold is a fully-informed expert on advertising and its practice in the state, or do you want more foundation?

MR. CANBY: No, I waive the foundation.

Q. BY MR. FRANK: Mr. Arnold, what is the practice of the architectural profession in respect to newspaper advertising?

A. It has been prohibited.

Q. For how long?

A. I think since the founding of the Institute which was, I believe, in the late 1880's.

MR. FRANK: Mr. Chairman, Mr. Canby, I ask leave to lead, because this is obvious stuff.

Q. BY MR. FRANK: Isn't it true, Mr. Arnold, that in connection with your profession, unlike law or (99) accounting, the discipline is left to your association and is not enforced by the state in any way; is that correct?

A. That is correct.

Q. So far as advertising is concerned?

A. Right.

Q. But if, in fact, an architect were responsible for advertising, are there disciplinary procedures within the architectural organizations to examine in to such matters?

A. Yes. There are committees on ethics in each Chapter, as well as at the national level.

Q. What sanction would be imposed, if it should appear that someone were guilty of either advertising or repeatedly advertising, perhaps?

A. If it went as far as the national level, it would probably be a censure, which would be published in the Institute's material.

Q. Suppose it happened again, what discipline would be imposed?

Can somebody be dropped from the association?

A. Conceivably, they could be dropped from the membership.

Q. In your profession, however, unlike the others, I think you permit person-to-person solicitation; don't you?

(100) A. Yes.

Q. Would you describe the kind of solici-

tation that architects do regard as proper?

A. Well, traditionally, they hoped they would get known by their works, and people would come to them or clients would come to them. As it happens, we will make person-to-person contact with potential clients, and making it known what services we offer.

Q. And by the traditions of your profession, it's perfectly proper to call on someone -- correction -- call on someone whom you believe to be about to do some building, to interest him in engaging your firm for that purpose, is that right?

A. That is correct.

Q. But you bar advertising to the general public, as a whole?

A. Right.

Q. As distinguished from person-to-person?

A. Right.

Q. Now, what is the record in this

community for young architects?

Do competent architects find that they can develop careers, normally, within a few years here?

A. It would seem so, with the number of architects that we have in the community.

(101) Q. Well, you know the profession thoroughly, as president and having moved through all of the chairs all over the state; isn't that true?

A. Yes.

Q. Is it true that quite universally competent architects, at least from two to five years up, are able to find a reasonable amount of work to keep busy and make reasonable incomes?

A. Yes.

Q. And they do that without any public advertising?

A. That's correct.

Q. Well, Mr. Arnold, what are the evils of advertising, as the architectural

profession sees it?

How would the public interest be disserved?

A. It's considered to be self-laudatory as through the Code of Ethics.

Q. But I want to get to the reason for the rule. What is the loss to the community, if any?

A. I think by the possibility of misleading the public, in general.

Q. What do you regard as the capacity of architectural advertising to mislead?

A. They could very readily oversimplify the concept of problems that the owner would face in going about a building project.

(102) Q. Can we be concrete about this? Isn't it perfectly true that, for example, you have done, I think, as I recall it, I think it's the library in Flagstaff--is my memory correct--some building in Flagstaff--that won a prize? Straighten

me out, because I'm speaking from memory.

A. We have done various buildings on the campus in Flagstaff.

Q. There was one --

A. There was a NASA project at the Lowell Observatory.

Q. If you simply put a picture of that building in the newspaper and put below it as an advertisement Richard Arnold as the architect of this building, would that mislead anybody?

A. Just the picture itself?

Q. Just the picture and your name.

A. I don't see that it would.

Q. What, then, would be the kind of advertising which you think might mislead?

Will price advertising mislead?

A. Suppose it said that "Richard Arnold designed this building on budget for this client", that's implying that I would always do that.

Q. Do you miss occasionally?

(103) A. I'm afraid so.

Q. Mr. Arnold, I want to get to the question of price advertising. Do you regard price advertising of architectural services as somehow inherently misleading?

A. Well, yes.

Q. Why?

A. Because the pricing of services will vary all over the place as to the nature of services and the scope of the project, the scope of the problems that the owner is encountering.

Q. Mr. Arnold, isn't it true that frequently architects utilize a percentage of the cost of the building as a base portion of the fee?

A. That is one of the measures, right.

Q. But is it not also true that there are in the standard agreements used by architects paragraph after paragraph, running to pages for varying items which may affect the price before the job is done?

A. Yes.

Q. And there are fixed price items within the percentage, and then there are a lot of other items which are additional items which can unexpectedly crop up; isn't that so?

A. That is right.

Q. And that is universal architectural practice (104) under forms of the contract that are substantially always used by architects; isn't that so?

A. Quite right.

Q. Do you regard it as misleading, then, to say, "We will build your home for six percent of the cost"?

A. I would say it was misleading, of course, besides being poor business.

Q. And misleading in the sense that if you use the standard contract, it simply won't be true, because of the miscellaneous unanticipatable items; isn't that right?

A. Yes.

MR. FRANK: Your witness.

* * * * *

EXAMINATION

BY MR. CANBY:

Q. Is it misleading if you advertise that you will build a home for six percent of cost, and then you go ahead and do it? I mean, that you will do the architecture.

A. After the fact, it was not misleading beforehand, right.

Q. Right. In other words, it was performed according to the advertisement, then that would not be misleading; is that correct?

A. It wouldn't be misleading. It would probably be misleading in the first place, from a practical matter, (105) that you are guaranteeing a price to begin with, when you don't know what the circumstances are.

Q. Of course, it doesn't mislead if you adhere to that price?

A. True.

Q. It may be bad business, and you may find it economically unfeasible to adhere to that price?

A. If it was accomplished, and the owner was not mislead (sic).

Q. Mr. Frank asked you whether it would mislead the public to put a picture and the name of yourself, an architect, let's say, in the newspaper. Is that forbidden by the professional code of architects, now?

A. If it appears as advertising, yes.

Q. If you simply put in a box?

A. A paid advertising?

Q. Paid. Okay, you paid to have a picture put in and your name, that would be not permitted?

A. No, that's right.

Q. Are you allowed to put a sign up at the building site with your name as architect?

A. Yes.

Q. The several pages of variances that may occur in a building, is that a generally standard form used by architects?

(106) A. Yes, it is.

Q. Do all architects use the same percentage figure information in those instances when they will perform the architectural services for a percentage of the cost, along with those qualifications which are standard?

Do all architects charge the same percentage?

A. No, nor for the same type project, either.

Q. It would violate your code, would, it, to publish a statement saying, our base percentage for a particular type of job described is seven percent, subject to qualifications used in the standard architect form?

A. If it's plain advertising, it would

violate.

Q. It would violate.

You testified that competent architects are able to achieve a viable practice within somewhere two to five years. Do any incompetent architects manage also to achieve viable practice?

A. You are asking me to make a judgment?

Q. Yes, I do, because it seems to me the question you answered previously calls for a judgment of whether competent architects are able to succeed.

MR. FRANK: You won't have to name them, Dick.

Q. BY MR. CANBY: No, I won't ask you to name them.

A. The answer is, of course.

Q. Are there architects who fail to establish a (107) practice?

A. Yes.

Q. There are.

What are the consequences of being drop-

ped from membership in the association that you mentioned?

A. Simply that you are no longer a member or enjoy any of the privileges of membership, or that you can use the initials AIA in conjunction with your firm name or your own name.

Q. If an architect advertises through paid advertising in newspapers, is it possible that he will lose his license to practice, to practice architecture?

A. No, that's not covered by the statute.

MR. CANBY: I have no further questions.

MR. FRANK: Nothing further.

THE CHAIRMAN: I'd like to ask a couple questions of Mr. Arnold.

EXAMINATION

BY THE CHAIRMAN:

Q. Does the AIA permit its members to bid competitively for public jobs?

A. To my knowledge, there is no stipulation in the ethics with regard to that subject.

Q. Do I understand, then, if the Scottsdale School (108) District was contemplating building a new high school, that architects would be free to come in; be interviewed by the Board and quote a basis for their compensation in competition with other persons?

A. I take back my first comment. There is a prohibition as to competing on the basis of fee.

Q. So, if Architect A appeared before the Scottsdale Board and said, "I'll build your school for four percent for plans and two percent for supervision", and another fellow came in and said, "I can beat that, I'll do it for three and a half and two", that would be a violation of the standard of ethics in your profession?

A. That's right.

Q. We have been advised that the

Attorney General of Arizona issued an opinion in which he held that it was unlawful for the accounting profession to compete on that basis. Are you aware of whether or not the architecture society has been a subject of a comparable opinion?

A. No. I have not, of an opinion being issued.

MR. FRANK: May I make a notation for the record, Mr. Chairman?

THE CHAIRMAN: Yes. Do you have some knowledge about that?

MR. FRANK: I think so. The statute which deals with competitive bidding in the state does not apply to (109) architects, and does apply to a number of other professions. So that there is an expressed difference there.

Now, the opinion of the Attorney General deals with certain general anti-trust matters and bypasses the state statute in a burst of enthusiasm of his own.

Mr. Arnold, it is true that that matter has not been taken up, of the architects, by the Attorney General; whether because of statutory difference or otherwise, we don't know. Isn't that true?

THE CHAIRMAN: He has testified that he is not aware that there is any such opinion.

MR. FRANK: I thought you would like to know the state statute is different.

THE CHAIRMAN: I understand. I also said I understand that the opinion of the Attorney General did not rely upon the statutory difference; it was based upon the antitrust law.

Q. BY THE CHAIRMAN: You testified that the base charge made by architects, in general, are based on a percentage of the total amount of the contract?

A. That has been traditional.

Q. It's usually divided between a percentage per plans and percentage for

supervision; is it not?

A. Yes.

(110) Q. Has your association, either statewide or nationally, ever circulated or published recommended minimum percentages for various kinds of construction?

A. Yes, several years ago, but they have been withdrawn.

Q. You have discontinued doing that; isn't that true?

A. Right.

Q. At the present time individual architects are free to negotiate their percentages with individual clients?

A. Or any other basis of compensation.

Q. Or any other basis.

Do you feel that there is a need in the State of Arizona for wider delivery of architectural services to persons who are not now receiving needed services?

A. Yes.

Q. In general, is there much demand

for architectural services among the indigent?

A. No, not directly.

Q. For the most part, the needs for architectural services is a direct function of the availability of money or sources of money for persons to build things; isn't that right?

A. That's right.

(111) Q. Is there such a thing as a Legal Aid for Architectural Services for somebody who is desperately in need of an individual to provide him a design for improving what might be an unsafe or uninhabitable structure, but he can't afford to pay for the services?

A. Yes, the Chapter provides for that service.

Q. This case that we are considering involves an advertisement which places job fees on relatively standardized services, such as an uncontested divorce; what is

known, in quotes, "Simple will". Does your profession have that kind of standardized product, or is it pretty much custom, based on a structure-by-structure difference?

A. No, it would not be standardized, it would become very custom.

Q. So that even if you wanted to, I gather, it probably would be impractical for your profession to quote flat fees for architectural services, in connection with the design of a building, unless you were talking about a very standardized structure?

A. That's right.

THE CHAIRMAN: That's all I have.

MR. FRANK: Nothing further.

MR. CANBY: No questions.

MR. FRANK: May the witness be excused?

(112) MR. CANBY: No objection.

THE CHAIRMAN: Mr. Arnold, you may be excused, and thank you very much for helping.

(Witness excused.)

MR. FRANK: We rest.

THE CHAIRMAN: Would you like to call your next witness, Mr. Canby?

MR. FRANK: Do you want to put in your Exhibits, or did you do that before?

MR. CANBY: No.

THE CHAIRMAN: The only Exhibit we have for the Respondents is a No. 11. If you have others, would you like to have them marked now?

MR. CANBY: My witness has a couple of them. Let me mark this. This would be Respondents' Exhibit 12.

In Mr. Harrison's deposition, he refers to a brochure of the "Arizona Legal Services". This, I believe, is the brochure, the "Bylaws and Participating Attorney Rules" of "Arizona Legal Services".

MR. FRANK: No objection.

THE CHAIRMAN: It's called the "Bylaws"?

MR. CANBY: The title seems to be either "Arizona Legal Services" or "Answers About ALS", then there is a statement, "Bylaws and

Participating Attorney Rules".

THE CHAIRMAN: All right, there being no objection, (113) Respondents' Exhibit No. 12 may be received.

(Booklet marked Respondents' Exhibit No. 12 for identification by the Notary, and received in evidence.)

THE CHAIRMAN: Would you stand and raise your right hand, please.

* * * *

STEVEN RICHARD COX, being sworn as a witness by the Chairman, was examined and testifies as follows:

MR. CANBY: Well, before I begin the examination, I do have now the additional material, Respondents' Exhibit 13 will be a study entitled, "Restricted Advertising and Competition, The Case of Retail Drugs", and Respondents' Exhibit 14 will be a study from the "Journal of Law & Economics", titled, "The Effect of Advertising On The Price of Eyeglasses".

For No. 15, I think I'll introduce Mr. Cox' vita, the present witness' resume.

THE CHAIRMAN: Any objection to 13, 14 and 15?

MR. FRANK: None.

THE CHAIRMAN: Okay, they may be received.

(Booklet marked Respondents' Exhibit No. 13; copy of article from "Journal of Law & Economics" marked Respondents' Exhibit 14, and Vita of Steven R. Cox marked (114) Respondents' Exhibit 15 for identification by the Notary and received in evidence.)

* * * * *

EXAMINATION

BY MR. CANBY:

Q. Mr. Cox, could we have your full name?

A. Yes. Steven Richard Cox.

Q. Your address?

A. 3324 South Terrace Road, Tempe, Arizona.

Q. What is your employment?

A. I'm Associate Professor of Economics at Arizona State University.

Q. We have your vita sheet. Let me just ask one or two questions. You are in economics. How long have you been teaching?

A. Since 1970, the fall of 1970.

Q. You received your Doctors at Michigan?

A. University of Michigan, in January, 1971.

Q. Do you have a specialized area within economics?

A. Yes. It's the field known as industrial organization and public policy. The study of American industry and the impact of antitrust laws on competition in industry.

Q. In your list of publications you have recently published, is my understanding, in the field of defective (115) advertising?

A. Yes. There are many interests, subfields or topics in the field of the

industry, competitive advertising.

My most recent interest has been the role of information in making the market more competitive, and the effect of advertising on the amount of information that consumers have. Basically, three out of the last four articles that I have written and had accepted for publication have dealt with that either theoretically or practically.

The practical use has been the study of household detergent industry and information in the household detergent industry.

MR. FRANK: Mr. Canby, may I ask a question?

I'm holding your vita. Which of the last three or four articles do you refer to?

THE WITNESS: They are under the "Articles Published" on page 2. They are 10, 11, 12, and 13. I don't remember which of the ones is not, of 10 to 13 is not dealing with advertising.

MR. FRANK: Thank you. That helps me.

MR. CANBY: I'm assuming that there is no further need to go into basic qualifications; is that correct?

(Discussion off the record.)

(116) THE CHAIRMAN: Mr. Canby, the Committee will take into consideration not only the testimony of Doctor Cox but also the resume, which is Exhibit No. 15, in reaching the conclusion that he is qualified to express opinions in the field of his expertise.

MR. CANBY: Thank you, Mr. Chairman.

Q. BY MR. CANBY: Mr. Cox, have you had any occasion recently to examine any studies relating to the effect, the economic effects on prohibitions on advertising?

A. Yes. In my research on advertising and its impact on marketplaces I have come across two major studies; the only two, really, that I know of, and they are the ones that you introduced in evidence as

Exhibits.

Q. Respondents' Exhibits 13 and 14, I think we are referring to.

A. 13 and 14.

Q. To back up for a minute, you said one of your areas of special interest was the effect of information on the competitive system. Would you elaborate a little on it?

A. Well, economists have a model known as perfect competition. This model is based on a number of assumptions. One of the assumptions of the model is that consumers have perfect information. Okay.

(117) So, whenever, of course, that assumption breaks down and consumers don't have perfect information, the conclusion of the model, namely, the perfect competition that exists breaks down.

Now, maybe without trying to be too pedantic here and too much like a professor, let me emphasize here that competition has a particular meaning for economists that

lay people usually don't think about. Namely, it's a situation in which neither buyers or sellers interacting on a market have control over prices that they charge. So that, obviously, buyers are what?

They are out to get the product or the service for the lowest possible price, but as long as none of them have control they can't sort of get it at too low a price, a price that wouldn't enable a seller to operate.

Similarly, a seller wants to get it at the highest possible price, but as long as there is competition between sellers, they can't charge what?

A very high price and earn what we call monopoly profits, as a consequence.

I want to explain that, because laymen will talk about, and businessmen will talk about how they are subject to a great deal of competition.

This is true, for example, in the auto industry. They always talk about the compe-

tition in the auto (118) industry, but notice from an economist's definition of competition, namely, that no one buyer or seller has control over price; that doesn't pertain to the auto industry because General Motors pretty much sets the price in the industry and others follow suit.

Q. Does pure competition exist anywhere?

A. Perfect competition does not. One of the reasons it doesn't exist anywhere is that consumers don't have perfect information.

Q. That's one of the reasons, only?

A. Yes, one of the reasons.

On the other hand, there may be what economists always like to refer to as workable competition. Namely, given sort of the uncertainties and the imperfections that exist in the world, you could think of a situation--what?

In which consumers are relatively informed and in which marketplaces are

relatively competitive.

So, you could go from a situation, basically, as exists in agriculture and farming --another industry that is probably pretty workably competitive is textile manufacturing--all the way to situations which very few economists, if any, indeed would claim are very workably competitive, such as the auto industry, to pick out a good industry, and then a great deal of service industries, including doctors and lawyers.

(119) Q. All right. Back to the studies you mentioned. The Respondents' Exhibit 13, which I believe you have-- Mr. Chairman has--has to do with drug advertising. Who wrote that study?

A. Professor Cady. He is a professor of marketing at the University of Arizona. He wrote the study, or did the study for an institute called the American Enterprise Institute, in Washington.

Q. Do you have an opinion well, before I ask that question, I should say: Could you give us a brief statement of what the study says?

A. Yes. Here was a perfect opportunity for Professor Cady to examine what impact advertising has on the prices of prescription drugs. The reason, it's as close to a laboratory perfect situation as you can get in economics is that in some states there are bans on advertising, all the way from say an absolute ban to say bans on price advertising, to states where there are no bans whatsoever on advertising.

A medical survey, or a survey had been done by an outside marketing firm on what people were spending on their medical expenditures. People are making one of which was what? What are you spending on drugs? What drugs are you buying and what prices are you paying for drugs?

(120) So, here is a perfect setting

for Professor Cady. Namely, he was able to take this proce statement and look at the prices that people were paying for 10 commonly prescribed drugs across states, and was able to look at basically the mean prices that people were paying for these drugs in states where there was a ban on advertising, and the mean price they were paying for these drugs in states where there was no such ban, and basically found in the states where there was no ban on advertising the mean price was about five percent, is statistically significantly lower where there was a ban on advertising on prescription drug products.

Q. Do you have an opinion in regard to the reliability of the underlying survey regarding medical expenditures?

A. Well, the survey was --

MR. FRANK: You have lost me. What is that underlying survey?

Q. BY MR. CANBY: You said that --

A. It was done by a marketing firm here.

Q. It seems to me there are two things. If I may explain, one is there was a pre-existing survey dealing with how much was being spent on drugs in various places?

A. By the R.A. Gosselin Company, marketing research outfit.

(121) Q. Then this study which takes the data, and --

A. -- basically analyzes.

Q. Compares it with the effect of various relative bans on advertising.

MR. FRANK: Thank you. I must have missed that.

THE CHAIRMAN: Are you asking the witness to vouch for the reliability of the data upon which the conclusions were drawn?

MR. CANBY: I'm asking for reliability, the methods basically. In other words, what does he think of this study.

A. I don't have any information on the survey, the actual collection of the

price data. I trust that since Professor Cady and the American Enterprise Institute, which is a very reputable institute, used the study, I trust that the survey were very reliable and quite valid.

The study here, the things that Professor Cady did with the price data were indeed quite valid and quite reliable. Namely, he not only looked at the price differences between states with the ban and without, but went beyond and said: Are there other factors which could explain this differential?

Basically, did we see this lower price in states where there was no ban on advertising, but that consumers for that low price suffered some other disutility?

(122) Namely, although, you couldn't claim here an inferior product, because basically the retail establishments have nothing to do with that; that's the drug company, but could the customer for this

lower price suffer any kind of service differential?

Did they not receive -- and he looked at four or five different services.

For example, in the states where advertising was allowed, did firms grow to very large sizes, and those large firms not give any kind or sort of personal type services that a small establishment might give?

And he looked at delivery; service; credit; emergency service; the keeping of records, and then amenities in terms of waiting area where you could sort of go in and sit down and wait for your drugs, or whatever, and found that there was no statistically significant difference in service, where the consumer in these states where there was a ban on advertising and thus where consumers were paying a lower price, there was no -- in the state where the consumers were paying a lower

price for the drug, they were not getting any less service; they were getting just as good service.

Q. Those were the states that tended to be, on the average, where advertising of prices was permitted?

A. That's right. They got it for a lower price, and (123) no less service.

Q. Let's examine the other Exhibit, Respondents' Exhibit 14. This has to do with comparative price of eyeglasses. Who was the author of this study?

A. Professor Benham. He is the professor of economics. At the time he was at the University of Chicago; now he is at the University of Washington in St. Louis.

Q. Do you have an opinion about the methods of this study?

A. It's really the same kind of thing that Professor Cady did. He had sort of a golden laboratory experiment. Namely, there are some states where there is a ban

on the advertising of eyeglasses; other states where there is not.

He had the advantage of having, from an independent survey, data on the prices people were paying for eyeglasses across states, and again found that difference.

Now, he did something slightly different. He looked at -- like Cady, he lumped sort of all the states that had any kind of a ban, partial, absolute; any kind of a ban, and those states that did not; found about a five or six dollar differential on a 30 to \$40 pair of eyeglasses.

(124) Then, he said, "What might be the outside figure that people will be paying due to bans on advertising?"

So, he took a state, North Carolina, which had an absolute ban. You couldn't advertise anything anywhere and took states where there were no bans, Texas and the District of Columbia, and the differential jumped to \$19. Admittedly, this is the

largest kind of an increase in price that could be expected in the ban; in this case, an absolute ban.

Q. Did this study include fitting glasses?

A. Yes. In fact, for some of the sample consumers, they did not separate the price of eyeglasses from the combined price of the eye examination and eyeglasses. So, here, was also involved the examination, as well as the fitting and the prescription of the eyeglasses.

Q. Was there any way of telling whether the level of services was being differentiated?

A. Well, not really in terms of eye examinations. He looked at information the consumers that reported the prices of eyeglasses only, and would be corrected for the types of people buying eyeglasses.

So, somebody might claim, for example, in states where there was a ban on advert-

ising, people may have had higher income and thus wouldn't have been, say, as responsive to prices, and so that's why the prices are (125) higher or they might have been older; there might have been a greater demand for eyeglasses in those states.

Unless the price is lower, higher, so he corrected for what he called social and economic conditions for the individual purchasers, family, and age, and so on, and still found, what?

This price difference.

Second, where he tried to find where maybe there is indeed a ban on advertising and where these prices are higher, the eyeglasses are somehow superior. Superior in terms of glass and cut and fitting and so on.

He did two things. One: He tried to find out where the eyeglasses were made. Was it made by some character who sort of just grinded the glass, or is it some reput-

able firm across these states; and found, basically, whether you are talking about states where there is a ban or states without a ban, the retail establishments were basically getting their eyeglasses from three major firms, Bausch and Lomb.

Then, he did a personal, I guess, survey of New Mexico and Texas, two contiguous states; Texas being nonban; having some ban, and really inquiring of optometrists and so on, whether indeed the quality of eyeglasses differ between those two states, and found that there was none.

(126) MR. DIVELBISS: What was that last answer?

THE WITNESS: There was none.

A. (Continuing) So, the price differentials couldn't be explained by individual buyer characteristics, and that is the demand in the state where there was a ban on advertising was greater, claiming a higher price, and there also was no quality

differential explaining the lower price.

Q. BY MR. CANBY: Is it fair to conclude from your examination of these studies and from any other experiments that you have done that a ban on price advertising in general marketing tends to drive up prices?

A. You are being very cautious. I can be even stronger. The answer definitely is yes.

In fact, as you know, economists have a reputation for not agreeing on too many things. Here is one area, namely, price advertising, where I think you'd find it very difficult, if not impossible, to get any economist in this country to come and sit in this chair and claim otherwise. Namely, you get any economist you want to go out and pick up -- all right -- and they are going to sit in this chair and they are going to respond, what?

Yes, price advertising is pro-com-

petitive and will decrease prices, and conversely, a ban on price (127) advertising will be anti-competitive and will increase prices.

There are very few areas where they are going to get that kind of an agreement among economists, but here's one of them.

Q. Let me inform you that the legal profession, generally, and the legal profession in Arizona, specifically, has a ban on advertising to the public, which includes a ban on the advertising of prices.

Are you familiar with that fact?

A. Yes.

Q. Do you know of any studies that have been done on the effect of the ban on advertising in the professions?

A. No. As far as I know, there are none. One of the primary reasons I think there are none is that we don't have a laboratory situation to work with; namely, I don't know of any states where there is

no such ban.

If there are any, please tell me and I can do a study.

Q. Are there any kind of studies that could be done on the effect of a total ban, when the ban is total?

In other words, could any studies be done in the legal profession, and the effect of the advertising ban, economically?

A. Well, if you had a situation where, say, there (128) were some states with a total ban on advertising and other states where the ban were not so total, they would allow some kind of advertising, or they would allow advertising, say, in some media, you might be able to do the experiment, the kind of experiment that was done here, but you have to be fairly careful, because if, let's say, the partial bans are such that -- well, the kind of thing that I know, the American Bar Association, I believe, just recently passed, stating that lawyers, as

far as they were concerned now, I guess, could advertise in professionally accepted places or something like that.

Q. May I interrupt you. There have been certain law lists that have always been able to advertise, to put their names in. They are of limited circulation.

My understanding of the ABA change, which is now in evidence, is that it would be permissible for lawyers to advertise a certified specialty in the Yellow Pages, and a price for consultation in the Yellow Pages.

A. That would be a little different from the limited sources.

MR. FRANK: Pardon me. What question is pending before the witness? I have lost track.

Would you mind restating it.

MR. CANBY: I have to restate it.

The question is: Is there anything, really, that (129) could be studied?

I interrupted his answer.

I think his answer so far: The differences in permissibility of advertising are marginal.

A. (Continuing) Could anything be done--

MR. FRANK: Please, Mr. Chairman, I would like, please, before the witness answers further to have something that ends with a question mark.

MR. CANBY: All right. I think that's been answered adequately.

Q. BY MR. CANBY: Is one of these studies quite a considerable undertaking?

Let's take the drug price study.

A. The major undertaking is the gathering of price data. From there, it's really not too major an undertaking, other than sort of a library reserach (sic) as to what prohibitions and what laws exist in each state.

Q. Do you know of any body of under-

lying data available in the legal profession regarding legal services which would permit such a study?

A. No.

Q. That is not something, I presume, that can be gathered by one or two people in a few weeks.

A. No, certainly not.

Q. Mr. Cox, let me show you Bar Exhibit No. 6. That (130) is an advertisement placed in the "Arizona Republic" by the Respondents in this case.

Do you have an opinion on the competitive effect of that kind of advertisement, or, in fact, that advertisement?

A. Yes, indeed, I do have an opinion.

Here is a classic illustration of what economists would call price advertising, namely, the reporting of the goods or service -- in this case a service being rendered and the price that's going to be charged for such a service.

As I previously stated, I can't think of an economist who wouldn't claim that price advertisements do not have a competitive effect.

MR. FRANK: Pardon me. What we are now hearing is kind of removed, I think, from the question. I don't want to make an objection, but I wonder if we could have --

THE CHAIRMAN: Break it down.

MR. CANBY: The question and answer a little bit more?

THE CHAIRMAN: I may say I read the answer as being responsive to the question, but you may proceed.

MR. CANBY: Very well.

Q. BY MR. CANBY: What is your opinion concerning the competitive effect of a change in the rule which would (131) permit any attorney to advertise prices?

A. My opinion is the effect will be one of increase in competition and a lowering of prices for consumers.

Q. Won't that lower the quality?

A. Not if these studies hold up.

That's a much harder question to answer.

All right. But the two studies that have been done, now, admittedly are on products rather than services, retail drugs and eyeglasses, although the drugs might be a little better example for this case at hand, because there specifically they looked at: Did less services accompany the lower prices? And the answer was no.

So, I have to say it's my opinion that the quality of services would not necessarily decrease as a result of the lower price, due to the advertising.

Q. Are there service industries in the United States that are workably competitive?

Is there any service industry?

A. Oh, sure. Any one into which basically there is not a substantial barrier to entry of labor. The service industries are highly labor intensive. All right.

The things that makes a service industry tend to be anticompetitive or uncompetitive, not workably competitive would be if, what?

If a laborer couldn't get into the area. Okay.

(132) Now, I remind you of there is no perfectly competitive situation. There is no situation in which you can wave your magic wand and be a barber or a beautician or whatever. All right. But anything like that, you know, lawn services, barbers, beauticians, there is relatively free entry. As a consequence, the service industries are workably competitive and the prices are about as low as the source could say will allow them to go.

Q. Is there any reason to believe that competition affects quality in the workably competitive services?

A. Yes. It increases it, which is probably an answer you didn't suspect.

Namely, when indeed there is genuine competition between sellers -- all right -- not only do they want to, in order to attract customers, offer the service at the lowest possible price, but the very best service that can be offered at that price.

MR. CANBY: I have no further questions.

THE CHAIRMAN: Mr. Frank.

EXAMINATION

BY MR. FRANK:

Q. Mr. Cox, with reference to the study of drug prices in article 13, I believe the drugs are listed at (133) page 8 in the article; isn't that correct?

THE CHAIRMAN: You meant Exhibit 13.

MR. FRANK: Thank you. Did I mis-speak? Exhibit 13.

Q. BY MR. FRANK: Now, those are all standard items produced by national manufacturers, and then distributed in local drug stores; aren't they?

A. Yes, as far as I know.

Q. So that these are items in which when the druggist gets the prescription, he simply goes to the shelf; gets a large bottle; pours out some standard items and puts them in a smaller bottle and hands them over and charges some money; isn't that true?

A. Okay. Basically.

Q. Isn't that true?

A. Basically.

Q. They are totally standard; interchangeable?

A. The drugs aren't interchangeable.

Q. No, but all Darvon Compound 65 is simply the same, and the drug company turns it out by a machine, and it goes on, doesn't it?

A. Yes.

Q. And this is what the article is about, the effect of pricing on standardized items?

A. The effect of retail price.

Q. Now let us turn to the matter of the eyeglass (134) study. You had some talk about the relation of the examination and the eyeglasses. The fact is that this is a study of effective advertising on the prices of eyeglasses only and not of the examinations; isn't it?

A. Yes.

Q. The discretionary element of examination is totally irrelevant to what this article purports to cover?

A. Some other member -- if Benham had been doing the survey, all he would have asked for was the price of the eyeglasses, because that's what he was interested in. Now, because he hadn't done the survey; it had been done by somebody else at some other time, some of the consumers responding had given only the price for both examinations and eyeglasses, but in that case he basically just assumed that the price for the examinations was the same

across these states. All right. The variance was to the price of eyeglasses.

Q. I'd like to ask if we can agree that what you have just said is said explicitly in the article at page 341, the systematic variation and total cost examined here is assumed to reflect variation in the cost of the eyeglasses, excluding the examinations; isn't that so?

A. That's right.

Q. What, then, they are talking about is the business of going to the person who manufacturers the (135) glasses after there has been a prescription and who sells, first of all, the frames; isn't that so.

A. Yes.

Q. And said that those frames, all of them, came from two or three manufacturers in the United States?

A. Not the frames, the glass itself.

Q. Where did the frames come from?

A. I don't know.

Q. But, at least, they are nationally produced; they are items simply on the shelf in the eyeglass seller's store, aren't they?

A. Well, two parts to that question. I don't know whether the frames are nationally produced.

You are correct, yes, the frames are there at the local retail establishment.

Q. Right. And the lenses, you say, are all produced by three national concerns; is that correct?

A. Well, I think the figure in there is about 70 percent, the vast majority.

Q. And what the fellow does who is being studied here, he takes the prescription; takes the standard lens appropriate for the purpose, produced by a national manufacturer; he fits the lens into the frames and glues it into place; isn't that so?

A. Yes. I don't know if he glues it.

(136) Q. Attaches it.

A. Yes.

Q. That's his function. He then -- you had some talk about fitting. The fitting consists of having a fellow in a white coat, usually, sit down across from the customer and hands them the glasses, and kinds of fiddles with them a little to see if they hurt his ears; isn't that so?

A. Yes. That's basically been my experience, as well.

Q. And the sole professional judgment that is performed by the vendor of that item is to wiggle the frame on the glass a little bit, where there is a wire in the middle of it, in a gentle way, to make it fit over the ear, isn't that so?

A. Let's not be totally unfair to the person selling you the eyeglasses. He does have to do what?

Make sure the glass piece he is giving you --

Q. Is the one you asked for?

A. -- fits the prescription that the doctor has written out.

Q. Right. I agree.

A. So the guy is not totally devoid here, or the person is not totally devoid here of judgment.

Q. But it's close.

(137) Should we add that the druggist, also, has to be sure that he is giving you Darvon and not Ovulen?

A. Yes.

Q. He has to be able to read, and he has to be able to count?

A. Yes. He especially has to be able to read the doctor's writing.

Q. Now, in short, in these two studies we are dealing with about the most standardized items that could be conceivably found; aren't they?

A. As far as the retail establishment is concerned, yes.

Q. Yes. All right, now, you have said that if advertising were -- if the advertising ban were eliminated for lawyers, you would then like to do a similar study as it relates to legal services, and I'd like to ask you a couple questions about the study that you contemplate in that prospective day. I'll ask about, if your don't mind, my own areas of specialization, which is the field of appeals to various courts.

Assuming that all bans on advertising were lifted for lawyers; what kind of a study would you anticipate doing concerning appeals?

A. Well, it would be more than these, because notice this can be done at a moment in time. All right. If the (138) ban is lifted, then you have got to compare a cross-time. More ideal, would be for some states to lift the ban then at a moment in time, namely say 1977; look at the states that lifted the ban and those states that

still have that.

Q. We'll give you that. Let's say most of the states, adjacent states, one retails and one doesn't. You are going to do this study, and you are going to do it on the matter of appeals, if you don't mind.

What is it that you are going to be looking for?

A. You'll look for -- you'll try to standardize on two dimensions.

Q. What would that be?

A. One, on the service being rendered.

Q. Right.

A. Okay. So, in your case, appeals on say a murder conviction, or appeal on some antitrust violation --

Q. All right. Let's take an appeal on a murder conviction. I have just been through one of those.

A. Well, that's it, basically. You'd want to make sure that you are comparing, what? Like cases.

An appeal, the price charged for an appeal on a murder conviction in one state, where there is a ban on advertising and an appeal on a murder conviction in a state where there is no such ban.

Then, the second --

(139) Q. So now, we have got all murder cases in banning states, and all murder cases in nonbanning states; is that right? We are going to compare those?

A. The prices charged for appealing of such a case.

Q. Right.

A. The second dimension on which you'd want to standardize is basically the lawyer doing the appeal. Is the lawyer in each case as comparable as you can make it?

Obviously, there is not going to be perfect comparability. You can statistically account for some degrees of incomparability.

So, remember in the eyeglasses, remember

they tried to explain the price differences based on what?

Not just the ban on advertising but on the characteristics of the person buying.

Now, this is a little bit different. Namely, you try to be standardizing on lawyers.

Do you want me to anticipate another question?

Q. No, I'd rather you didn't, if you don't mind. It would be easier if I asked them and you answer them.

Isn't it true, unless we can standardize the murders and the lawyers, we can't make that study? Isn't that true? Yes or no?

A. No.

Q. Then, explain.

(140) A. My answer is no, if you are going to make me say "Yes" or "No".

Q. Then, explain. Make your comment.

A. I'll make an analogy. Just as I

responded earlier to the fact that there is no such thing as perfect competition; on the other hand, you can use a little judgment in terms of whether claiming something is basically workably competitive and something is not.

The same thing is true here. You are never going to get two perfectly comparable lawyers. In fact, by definition, they'd have to be one in the same person divided up into two people in carna to have that. But you can try to get two degrees of lawyers as comparable as possible, the same number of years, the same number of cases handled on appeal, the same number of cases won; so on and so forth.

Q. Let's pause for a moment to be sure I understand. We have to be able to standardize the murders and the lawyers both, murder cases and the lawyers somehow, in order to be able to make this kind of study; isn't that true?

A. You have to make some attempt at standardization, that is correct.

Q. I'll ask you to assume for a moment, hypothetically, that that can't be done, you can't (141) standardize the murders and you can't standardize the lawyers. If that hypotheses is true, you can't have that kind of study.

A. That is correct.

Q. If that is so, it would be impossible to demonstrate by any means known to you that advertising had an effect by way of lowering prices; isn't that so?

A. With certainty, that's correct.

Q. Now, if I advise you that to take, first of all, murders, that is a matter in which I can't suppose that you would have expertise, reasonably; so just let me honestly advise you they range terribly from matters that are so open and shut that a couple of hours will dispose of it, what we call Anders cases, to matters which may

take many people months of hard work.

Are you aware of the extreme range of difficulty that there may be in murder cases?

A. Certainly. I can imagine that, sure.

Q. Can you accept the assumption comfortably that they are about as far away from standard items poured out of a bottle as you can get, in terms of the degree of nonstandardization which they have?

Can you accept that?

A. Yes. I make the analogy of students, they are about as wide a range of skill and interest as you can get.

(142) Q. A pretty diverse lot?

A. Yes.

Q. Now, are there any empirical studies which have been made of the effect of advertising on the price of wholly nonstandard items?

A. No, and it would be inappropriate to

do so.

Q. You testified that if there were advertising, it would lead to price competition for lawyers. Was that your opinion?

A. That's my opinion, yes.

Q. Did you also, I think, testify that it was your opinion that such competition would increase the quality of legal services?

A. It certainly wouldn't, in my opinion, decrease it, and it might very well increase it, yes.

Q. But that is based wholly upon the studies, so far as there is any factual basis for that in the sale of standard items; isn't that true?

A. No, not entirely true.

Q. Name any other study on which you base that opinion?

A. It's not a study, it's basically sort of logical set of reasoning. Namely, that since I conclude that it will have an

effect on competition -- all right -- namely, increased competition, and on the assumption that a (143) seller always wants to do what? Sell his product or service. In this case, service.

He is going to do what?

He is going to attempt to sell the very best service at the lowest probable price, in order to do what?

To attract the business.

Q. Do you have an opinion as to whether competition exists at the present time amongst lawyers?

A. Yes, I do have an opinion?

Q. What is that opinion?

A. It doesn't exist.

Q. There is no competition among lawyers; is that your opinion?

A. There is no workable degree of competition among lawyers, that is correct. That is my opinion.

Q. Do you base that on readings of any

particular sort?

A. No, I base it on one very simple fact, and that is, entry to the legal profession is not relatively free, and without such entry there cannot be a high degree of workable competition.

Q. What do you mean when you say entry is not free?

A. You, one, have to first go to law school -- you can better inform me here -- you have to pass a bar exam, right? And I guess, in most states, to even be accepted (144) for a bar exam you have to go to law school.

Namely, you cannot set up the practice of law in many states simply because you know the state of law. You have to have done what?

You have to have gone to law school and passed the bar exam, and law school admissions; they are not open; they are limited.

Q. I advise you that there are approximately 4,000 attorneys admitted to the Bar in this state, all of whom have gone to law school; taken the bar examination and been admitted -- substantially all; any exceptions are too minor to matter, and it is, I believe, the opinion that you were expressing that there is no competition among those 4,000 lawyers?

A. No workable degree of competition. That is correct.

MR. FRANK: I have no further questions.

EXAMINATION

BY MR. CANBY:

Q. By "workable degree of competition", you were referring to the definitions you gave at the beginning of your testimony?

A. Yes.

Q. Is that right?

(145) A. Yes, plus the common misconception among noneconomists that the number of sellers in competition are synonymous

and that just is not the case.

Q. But, in other words, you are giving an economic definition of workable competition?

A. That's right.

Q. You were asked a hypothetical on whether you could make a study when legal services could not be standardized. Your answer as I understand it, was "No".

You were asked to accept it as a hypothetical. Do you accept the proposition that legal services cannot be standardized?

A. No, I don't.

Q. Do you think it would depend at all on the legal service in question?

A. Yes. Some services will be able to be made more comparable than others, certainly.

Writing a simple will, seems to me, to be a service that might lend itself to greater comparability across people than say handling a first degree murder case.

Q. Would you say that the more routin-

ization -- if that's a word -- that there is, the easier it would be to establish comparability?

A. Yes, certainly.

(146) Q. Even though there is no workable competition among lawyers, because of restricted entry, would price competition bring the existing system closer to workable competition?

A. Certainly, because one aspect of workable competition is the price charged, and I have no doubt that for same quality service the price would fall.

Q. One further question: If you would assume that it is the practice of many attorneys for many services to quote a flat fee or a flat hourly rate before they embark on the work, when they are first talking with the client; assume that practice for the question; then, assume that lawyers advertise that information in media of public distribution, like newspapers; would

that have any effect on the economics of the practice?

A. Yes, indeed. In fact, there is a very comparable type situation to what you are getting at in defense contracts. It's known as cost plus fixed fee. Okay. That is, we'll sort of add up the cost; you pay whatever they turn out to be, plus a certain profit that we stipulate or that we stipulate or that we agree versus what is called a firm fixed fee contract. Namely, to the government you bid so much money to produce whatever stated amount of tanks or ships or whatever. Okay.

Then, obviously, you base your fee on what you (147) project costs to be. Okay.

If you actually end up doing, what? Not incurring that many costs, your profits go up. If your costs are higher than what you anticipated the fee charged the government, is still fixed, and so your profits do what? Go down. All right.

That, obviously, from the seller's point of view -- and I can't even imagine any seller in the private market that wouldn't always like to operate on what? A cost plus fixed fee basis, but competition prevents that. Competition doesn't allow it. The same thing here you are talking about in terms of law.

Q. Well, I think that's one of the things my question involves.

The other is, let's say as a lawyer, a particular lawyer is willing to tell an individual client whenever one comes to his office that he will do an uncontested divorce for \$250, and that is his means of informing his potential client. Isn't that just as competitive as advertising in the newspaper?

A. Charging it without advertising is what you are saying? I didn't understand.

Q. I'm saying is there a difference between stating your fee when the client comes to you -- is there a difference be-

tween competitive effect between stating (148) when the client comes to you and stating your fee in the "Phoenix Republic"?

A. Slightly, and it's the cost to the consumer of acquiring such information. Namely, if it's allowed in the newspaper -- all right -- a person can obtain such price information by simply doing what? Picking up the newspaper and maybe flipping from page 2 to page 3 to page 4 -- okay -- and finding out, comparing between Lawyer 1, Lawyer 2 and Lawyer 3.

If that is not stated in the newspaper, but only stated in the office, upon walking in, how, then, does one acquire how much Lawyer 1, 2 and 3 charges?

He has to go to Lawyer 1's firm; go to Lawyer 2's firm, and use up what scarce time and resources he has in gathering that information; information that most likely, under those circumstances, won't be obtained, as is clearly the case in retail drugs.

Right now, even though retail drugs in many states can't be advertised, you can acquire the price information -- not over the phone -- I tried that in Washington, D.C.; they wouldn't give me the information over the phone. I had to appear in person.

Why does a producer require you to do this? Because he knows by requiring you to come in person raises the price of information thus reducing the probability (149) you are gathering the information, thus reducing your market, to have to appear to acquire the information, thus increasing the price to the consumer.

MR. CANBY: No further questions.

MR. FRANK: No questions.

THE CHAIRMAN: Does any member of the Committee have a question of the witness?

Mr. Canby, will you call your next witness or take whatever action is appropriate.

Thank you, Mr. Cox. Nice to see you.

(Witness excused.)

MR. CANBY: I will now recall Mr. Bates and Mr. O'Steen; if we can do it the same way this time.

THE CHAIRMAN: The witnesses O'Steen and Bates may resume the stand.

* * * *

BERNARD VAN O'STEEN, a Respondent, resumes the stand and testifies further as follows:

JOHN R. BATES, a Respondent, resumes the stand and testifies further as follows:

THE CHAIRMAN: You gentlemen are reminded you are (150) still under oath in these proceedings.

EXAMINATION

BY MR. CANBY:

Q. One or two preliminary questions. You both stated that you graduated from Arizona State University.

You were cum laude, weren't you, Mr. O'Steen?

A. BY MR. O'STEEN: Yes.

Q. Mr. Bates, I recall you won some sort of an award at graduation. What was that?

A. BY MR. BATES: I was chosen by the faculty as being the top student in my class.

Q. You went to work for Legal Aid for approximately two years, thereafter?

A. BY MR. BATES: Close to it.

Q. A year and a half.

In your present practice, have you taken any cases for no fee at all? Mr. O'Steen, perhaps can answer it.

A. BY MR. O'STEEN: Yes, we have.

Q. Have you done many cases for no fee at all?

THE CHAIRMAN: How many is "many"?

Q. BY MR. CANBY: How many cases have you done?

A. BY MR. O'STEEN: Gosh, I'm not really equipped to answer that question.

We have done a fair number of cases (151) at no fee at all, under varying circumstances.

THE CHAIRMAN: More than 25?

WITNESS O'STEEN: I would say more than 25.

THE CHAIRMAN: More than 50?

WITNESS O'STEEN: I imagine that's getting pretty close.

THE CHAIRMAN: All right, that's close enough.

Q. BY MR. CANBY: Under what circumstances did you do these cases?

Why, in other words, did you take it for no fee at all?

A. BY MR. O'STEEN: Various circumstances. We are members of the Legal Aid Society Referral Panel and are called upon periodically to take cases for no fee from the Legal Aid Society. We cooperate.

Q. Is that something for which you volunteer?

A. BY MR. O'STEEN: Yes. In addition, we are on the Maricopa County Bar Association Lawyer Referral Panel, and I think it's no secret that many of the people who are seeking attorneys through that organization are not equipped to pay much of a fee, and the panel handles cases that have come through that source.

We have just occasionally made the judgment, based upon our contact with a client at the office; that client was unable to pay and in need of service, and we (152) have occasionally done work at no fee that way.

The fourth category is, unhappily, the business of not getting your money in advance all the time.

Q. That's not really promono (sic) work on purpose?

A. BY MR. O'STEEN: No.

Q. You are also, aren't you, Mr. O'Steen on the Board of Public Interest Law

Firm here in Phoenix?

A. BY MR. O'STEEN: Yes the board of directors.

* * * *

Q. BY MR. CANBY: Mr. O'Steen, do you have any idea what the effect of the advertisement in the "Arizona Republic" was in bringing clients to your office?

A. BY MR. O'STEEN: Yes, I have a very good idea.

Q. Have you made some sort of compilation of that, at my request?

A. BY MR. O'STEEN: Yes, I have.

Q. Do you have that with you?

A. BY MR. O'STEEN: Yes, I do. I'm sorry, this was put together hastily, and we really didn't get as many copies as we should have, together.

THE CHAIRMAN: There is only one necessary for the (162) record.

WITNESS O'STEEN: I should add a date on that, if you don't mind.

MR. CANBY: Well, I'll ask you that. May we mark Respondents' Exhibit 17?

THE CHAIRMAN: Yes.

(Document marked Respondents' Exhibit No. 17 for identification by the Notary.)

THE CHAIRMAN: Can you give a title for this list?

MR. CANBY: Compilation of Cases Open Due to Advertising. That's a cumbersome title.

THE CHAIRMAN: Okay.

Q. BY MR. CANBY: You have numbers of cases listed in this document, which is now Respondents' Exhibit 17. There is a list of cases saying, "Cases Opened After Advertising". This is occupying the top half of the page. This is total cases your office has opened after date of publishing ads?

A. BY MR. O'STEEN: Yes.

Q. You have a column at the lower part of the page saying, "Cases Opened Due to Advertising". Now, several cases are listed

there. Why do you list cases being "Opened Due to Advertising"? How do you know?

A. BY MR. O'STEEN: We have an intake, brief intake sheet that each prospective client completes upon (163) entering the office, before that person sees an attorney. One of the questions on that intake sheet is: "How did you find out about us?" and we have reviewed those intake sheets to arrive at those figures.

Now, the only exception to that is that we have a special intake sheet for prospective divorce clients. That intake does not include the question about the source of information about the firm. Therefore, we don't have such information on divorce clients, but we do have it on all others. As you can see, there is a correction for that.

Q. So you have opened a total of 75 cases since the ad was published; five of those cases, if I read this correctly, were

domestic relations cases?

A. BY MR. O'STEEN: I believe that's correct, yes.

Q. And you have no way of knowing why they came to you?

A. BY MR. O'STEEN: No.

Q. That leaves 40 cases?

A. BY MR. O'STEEN: Yes.

Q. Other types?

A. BY MR. O'STEEN: Yes.

Q. Of those, you have listed by category cases that came to you, and you list 24 out of 40 as having come to you, at least of having answered the question on (164) the intake sheet of coming to you because of advertising; is that correct?

A. BY MR. O'STEEN: That's right.

Q. And the figures here were compiled from your own intake sheets by you or persons under your direction?

A. BY MR. O'STEEN: Yes.

MR. CANBY: I'll offer Respondents'

Exhibit 17.

MR. FRANK: May I ask a question or two on voir dire?

THE CHAIRMAN: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. FRANK:

Q. MR. O'Steen, this ad is approximately eight inches by two inches; is that the description?

A. BY MR. O'STEEN: Eight by two column inches, I believe.

Q. Suppose, hypothetically, someone put a two column-eight inch ad in the back of the paper, or the same page you did, saying, "Striped elephant on display", and gave a place, and suppose further that the newspaper carried on page 1 a story on the wonders of the striped elephant; if that afternoon quite a lot of people went to see the elephant, would you be able to tell whether it was the ad or the news story?

A. BY MR. O'STEEN: I wouldn't be able

to tell.

(165) Q. In your case, you had a two column-eight inch ad in the paper; isn't that so?

A. BY MR. O'STEEN: That's right.

Q. And there were other news stories about your ads, about the Bar and discipline and so on, and this very matter. So, therefore, the very existence of the ad has been an item of rather substantial news; isn't that true?

A. BY MR. O'STEEN: Yes. I think that's a fair statement.

Q. Do you really think that you are able, in this case, to attribute cases to the ad any better than you could attribute views of the striped elephant and the hypothetical I gave you in the first place?

You don't need to answer that, I will not object.

THE CHAIRMAN: Well, Exhibit 17 may be received in evidence, by Mr. Canby, for

whatever it may be worth in these proceedings.

(Respondents' Exhibit 17 received in evidence.)

EXAMINATION

BY MR. CANBY:

Q. What does your intake sheet actually say, the (166) question that the people are answering which led to this compilation?

A. BY MR. BATES: I think it says --

THE CHAIRMAN: This is Mr. Bates responding.

A. BY MR. BATES: -- it says, "Who referred you to us?" or "How did you hear about it?" That's very close.

Q. What kind of answers did you have put, "Due to advertising" on this sheet?

A. BY MR. BATES: Most of the people would say, "We saw your ad," or some people just said, "Newspaper."

Q. So, in saying "Newspaper", they can be referring to the front page story or

they could be referring to the ad, or a combination?

A. BY MR. BATES: However, it's possible many people already knew what we charge, and they could only find out after seeing our ad.

WITNESS O'STEEN: That's significant.

Q. Which they might have seen because they read the front page story?

A. BY MR. O'STEEN: Yes.

MR. CANBY: I have no other questions.

THE CHAIRMAN: I think we can take judicial notice of the fact that every paper had a front page story referring to the ad.

(167)

EXAMINATION

BY THE CHAIRMAN:

Q. I want to ask this question of either of you who is more knowledgeable concerning the nature of the responses which are found on the information sheet, which you have been addressing your testi-

mony. Would that be you, Mr. Bates?

A. BY MR. BATES: Fine. I didn't understand the question.

MR. CANBY: I didn't understand your question.

THE CHAIRMAN: I haven't asked it yet.

Q. BY THE CHAIRMAN: Prior to the time you placed your advertisement, what kind of responses were you finding on the information sheet that told you how the prospective clients had heard of you?

A. BY MR. BATES: Frequently, it was just another friend, an acquaintance; they would mention the name.

Q. Probably a prior client of yours, a recommendation?

A. BY MR. BATES: Frequently, or a friend of a prior client. They sometimes would mention various agencies. LEAP is an example, I suppose, of somebody who would know of our existence and would mention us,

among other attorneys who would be available.

As you know, Legal Assistance Agency here has several panels, and that's another way that people would (168) find out about us and write that down.

Q. Certain social service type agencies in the community would be aware of your existence, and perhaps suggest to an individual that you might be available?

A. BY MR. BATES: Right, but not as often as you might think. By far, the most common was simply from somebody who knew about us.

Q. Do you know what the cost to you of placing the advertisement was?

A. BY MR. BATES: Not precisely. Do you remember?

WITNESS O'STEEN: I know roughly.

Q. Let me have it roughly.

A. BY MR. O'STEEN: About \$260.

Q. \$260.

If you were permitted to repeat the advertisement as frequently as you opted to do, do you have any notion as to how often you would run it?

A. BY MR. O'STEEN: Is that addressed to me, Mr. von Ammon?

Q. If you can answer it, Mr. O'Steen.

A. BY MR. O'STEEN: No, I don't think we do. We have not reached the point where we felt comfortable to think about that.

Q. What I am concerned about is, if you can speak to (169) this issue, is the extent to which that added cost of operation would result in increasing charges to clients because of additional overhead. Do you regard it as nominal or substantial?

A. BY MR. O'STEEN: Well, the net effect of it, I think, is that prices will go down, because of increased volume. We'll be able to charge lower fees, in spite of the additional cost of advertising. That's my feeling.

There is no question that will be an advertising input into the budget, or drain on the budget for advertising, but it would be more than compensated for by the additional business.

Q. Offset by the volume, assuming you are able to arrive at any estimates of the potential increase in the volume, which would be generated by advertising, on the basis of the experience you have had thus far?

A. BY MR. O'STEEN: Yes, sir.

THE CHAIRMAN: That's all I have.

MR. CANBY: I did have a question or two left.

EXAMINATION

BY MR. CANBY:

Q. One is: Mr. O'Steen, how many cases did you open in the 44 days before you advertised, picking a number out of the air?

(170) A. BY MR. O'STEEN: I have that

information available. Within the 44 days immediately preceding the ad we opened 37 cases.

Q. How many did you open in the 44 days after?

A. BY MR. O'STEEN: 74.

Q. That happens to be exactly double; is that right?

A. BY MR. O'STEEN: That's right. Coincidentally, it is.

Q. Why did you pick the number 44, or why did I ask you 44?

MR. FRANK: What did he have in mind?

Q. BY MR. CANBY: What's the 44? Why did you pick 44 days to compile this information?

A. BY MR. O'STEEN: Because it's exactly 44 days from the day the ad ran until today, so we got the most complete data available, and went 44 days in the other direction.

Q. Those figures were just gross

figures. You won't know why the increase came; it's just broken down by time; is that correct?

A. BY MR. O'STEEN: We know to some extent why some of them came, and because of the other data.

Q. That's in response to the other questions I asked you. That gross figure is just that; correct?

A. BY MR. O'STEEN: Right.

(171) Q. One final question: Do you have any knowledge of the practice among attorneys generally here, or substantial numbers of attorneys regarding if they will quote a flat fee in advance for any legal services by telephone or directly?

A. BY MR. O'STEEN: Yes, I do have knowledge of that practice.

Q. Why do you have knowledge of that? Have you looked into it or have you talked to people?

A. BY MR. O'STEEN: There are two

reasons why I am acquainted with that practice. First, it's because of information of that type, that is, information about fees is a commonly shared thing among attorneys who engage in the same type of practice, at least among the attorneys who do the type of work we do. Attorneys are often comparing the fees with each other, and fee-setting practices.

Q. You have compared with others?

A. BY MR. O'STEEN: Yes, I have discussions with other attorneys all the time about that, and naturally, because of what we are doing we are a source of curiosity, and that topic comes up more often in conversations with other lawyers when we are involved than would ordinarily.

The other reason I know about those practice, that our fees are important to us, that is, the level (172) of the fee which we are charging, and a short time back, approximately six weeks ago, at my

direction, one of our legal assistants conducted probably a pretty unscientific random survey of fees charged by lawyers for typical cases in this area, and the format essentially was that she was instructed to call the attorney's office to inquire as to the fee.

She made these calls to separate offices. First, she made a series of about 10 calls to law offices to inquire for a simple, uncontested dissolution of marriage; then made 10 calls to 10 other firms to determine what their fees for an individual, uncontested bankruptcy, non-business bankruptcy was.

Now, the results of that survey are input into my knowledge of the practice of the fee quoting.

Q. Was it common to have a flat fee quoted?

A. BY MR. O'STEEN: Yes, it was, in both cases. The practice is widespread,

and for certain types of cases, typically nonbusiness bankruptcies, uncontested dissolutions of marriage, name changes, uncontested severance proceedings, the kinds of things that are advertised in the newspaper article, which is an Exhibit here, attorneys commonly charge fixed fees and quote them by telephone upon request, and that was the result of our poll.

(173) Q. Mr. O'Steen, are you a participating attorney to the Arizona Legal Service?

A. BY MR. O'STEEN: Yes, I am.

Q. Under that practice, which is best explained in document Respondents' Exhibit 12, there is a schedule of fees for certain services set forth; is there not?

A. BY MR. O'STEEN: Yes, there is.

Q. And attorneys agree to abide by those fees for that kind of a service; do they not?

A. BY MR. O'STEEN: It's my under-

standing that membership in ALS mandates agreement on the part of the attorney not to charge in excess of the fee quoted in that book, and that is the fee which will be paid by ALS to a member attorney for handling the type of case described.

MR. CANBY: I have no further questions.

THE CHAIRMAN: Mr. Frank.

EXAMINATION

BY MR. FRANK:

Q. Mr. O'Steen, in regard to your telephone poll, I believe that you testified that you instructed your staff person to call a number of law offices and ask concerning fees for particular types of work; is that correct?

A. BY MR. O'STEEN: That's right.

(174) Q. That she was to simulate being a prospective client and get the information that way?

A. BY MR. O'STEEN: That's right.

Q. Are you personally familiar with that one of the Canon of Ethics which says that one should deal with candor with fellow members of the Bar?

Seriously, are you?

A. BY MR. O'STEEN: Well, I can't say that I'm aware of that particular provision, but I can say that I abide by it and I don't believe what we did would be a violation of of that general point, whether or not it's a disciplinary rule.

Q. Mr. O'Steen, how many different law offices were called by your secretary, and from how many did she get quotations?

A. BY MR. O'STEEN: Altogether, approximately 20.

Q. Who made up the list?

A. BY MR. O'STEEN: I did.

Q. Was this office on the list, my own?

A. BY MR. O'STEEN: No.

Q. What were the criteria by which

you selected the firms that would be on the list?

A. BY MR. O'STEEN: That's why I prefaced my remarks before, by saying that it was a rather unscientific poll, and I sat down with the Bar Directory, (175) and went through it and picked law firms which were of small and medium size, and firms which I knew to be engaged in the general day-to-day practice of law; handling the types of cases we do, divorces and individual bankruptcies, and that sort of thing. I didn't call any large law firms.

Q. Isn't it true that you selected your sample with an eye to getting those that would give you quotations over the phone?

A. BY MR. O'STEEN: No.

Q. But simply took into account whether they do the kind of work which is involved?

A. BY MR. O'STEEN: That's right.

That was really the only criteria, and the size of the firm, as an element of that.

Q. Why did you exclude large firms?

A. BY MR. O'STEEN: Well, it's my experience that large firms don't handle this type of case.

Q. It's your understanding that, for example, this office wouldn't handle a divorce or wouldn't handle a bankruptcy, a personal bankruptcy?

A. BY MR. O'STEEN: It's my understanding that this office doesn't welcome that kind of work.

MR. FRANK: Nothing further.

THE CHAIRMAN: Anything further, Mr. Canby.

(176) MR. CANBY: No.

THE CHAIRMAN: Do you have anything further to present, in any case at all?

MR. CANBY: I have nothing further, and I rest.

THE CHAIRMAN: Why don't you sit here

until the members of the committee vacate.

(The Chairman and Members of the Committee left the hearing room, and shortly thereafter returned.)

THE CHAIRMAN: May we reconvene.

The Committee is of the opinion that its responsibility and duty is limited to a determination as to whether or not the charge that has been brought against the Respondents has been proven. We, therefore, think we have no choice except to make a finding that the charge is proven, because it really is not even disputed; that the advertisement was placed in the "Arizona Republic", in violation of the applicable rule to be found in the Code of Professional Responsibility. We, therefore, will make such a finding.

* * * *

STIPULATED EXHIBIT

(Dated April 7, 1976)

* * * *

The following exhibit has been compiled from information supplied by the law firms listed on Schedule A attached. These firms were asked to respond to certain questions. The questions and each firm's response are given. The responses are identified by number only.

It is stipulated that the names of the firms need not be identified with their answers in this exhibit; further, it is stipulated that if the persons responding on behalf of these firms were to appear at the hearing in this matter their testimony would be as set out in this exhibit. It is also stipulated that cross examination is waived and that this exhibit may be admitted.

By: William C. Canby, Jr.
Attorney for Respondents

By: John P. Frank
Attorney for the State
Bar of Arizona

Dated: April 7, 1976

* * * *

SCHEDULE A

Rawlins, Ellis, Burrus & Kiewit

Jennings, Strouss & Salmon

Moore & Romley

Lewis and Roca

Snell & Wilmer

Langerman, Begam, Lewis, Leonard and Marks

Streich, Lang, Weeks, Cardon & French

O'Connor, Cavanagh, Anderson, Westover,

Killingsworth & Beshears

Shimmel, Hill, Bishop & Gruender

Flynn, Kimerer, Thinnies & Derrick

Mariscal, Weeks, Lehman & McIntyre

Carson, Messinger, Elliott, Laughlin &

Ragan

Gust, Rosenfeld, Divelbess & Henderson

Ryley, Carlock & Ralston

* * * *

(1) QUESTION NO. 1. The growth of your firm in number of lawyers and volume of work by way of round numbers and for any period

you wish.

Firm No. 1. 1939-1976--three lawyers to 57.

Firm No. 2. From two lawyers in 1948 to 17 lawyers today.

Firm No. 3. Established in 1957. At that time it consisted of two lawyers and one secretary. At the present time, it consists of eleven lawyers, plus twenty-one non-lawyer employees. The gross dollar volume of professional services has increased by a factor of more than 30.

Firm No. 4. Began in 1969 with four attorneys, and presently has seven.

Firm No. 5. Regarding growth, in the early 1940's it was three lawyers. We are now 36 partners and 13 associates.

Firm No. 6. The firm was originally organized in 1949 and consisted of three lawyers. At the present time, our firm consists of twenty-four attorneys, four law clerks and two paralegals. The staff

size will be increased to twenty-six on June 1 of this year. The gross dollar volume of professional services has increased by a factor in excess of 30.

Firm No. 7. During the past twenty five years of the existence of our firm and its predecessors, we have grown from approximately five lawyers to approximately thirty-six lawyers, and the gross dollar volume of professional services has increased by a factor of more than 20.

Firm No. 8. In the twenty-two years of the writer's association with this firm it has grown from a single office with five lawyers to two offices with approximately twenty-three lawyers. The gross dollar volume for professional services has increased by a factor in excess of twenty.

Firm No. 9. The law firm has grown from two lawyers to our present six lawyers since 1970 and at the same time the gross dollar volume in this firm has increased

by a factor of more than 4.7.

Firm No. 10. The firm had its origin January 1, 1959. Since that time it has grown from three (3) attorneys to its present size of forty-three (43). Our gross dollar volume of professional services has increased by a factor of approximately 60.

(1a) Firm No. 11. The firm was organized in 1937 with only two lawyers, later expanded to 19 and currently consists of 9 lawyers. The dollar amounts, in light of the changes in the firm, are not readily available and probably would not be meaningful in any event.

Firm No. 12. In answer to question No. 1, in 26 years this firm has grown from three to 50 lawyers. The gross dollar volume has increased by a factor of 70 in that time.

Firm No. 13. In the past 10 years, the number of lawyers in this firm has approximately doubled to the present strength

of 23. The gross dollar volume of professional services has approximately quadrupled.

Firm No. 14. In 1946 there were two lawyers in this firm. In 1953 there were four, after one death in 1952. In 1956 there were six. Now, twenty years later, there are sixteen active lawyers and a retired lawyer in "of counsel" category who is essentially inactive. During those years we have lost one member by death and three by withdrawal. Two in the latter category are members of the judiciary.

In the twenty years of 1956 through 1975 the firm's annual gross receipts increased by over 800%, and the annual gross receipts per lawyer by over 300%.

(2) QUESTION NO. 2. Has your firm ever advertised or solicited business in any ways precluded by the Canons?

Firm No. 1. No.

Firm No. 2. No.

Firm No. 3. No.

Firm No. 4. Our firm has never advertised nor solicited business in any way precluded by the Canons, and we have no future plans to advertise or solicit.

Firm No. 5. Our firm has never advertised or solicited business in any way precluded by the Canons.

Firm No. 6. Obviously the firm has never advertised or solicited business in any ways precluded by the Code of Professional Responsibility.

Firm No. 7. The firm has never advertised or solicited business in any way precluded by the Code of Professional Responsibility.

Firm No. 8. Absolutely not.

Firm No. 9. This firm has never advertised or solicited business in any way precluded by the Canons of Judicial Ethics.

Firm No. 10. The firm has never advertised nor solicited business in any ways

precluded by the Canons.

Firm No. 11. The firm has never advertised or solicited business in any ways precluded by the Canons.

Firm No. 12. The firm has never advertised or solicited business in any way precluded by the Canons.

Firm No. 13. No.

Firm No. 14. We have never advertised or solicited clients or legal work in any way precluded by the Canons of Professional Ethics or the Code of Professional Conduct.

(3) QUESTION NO. 3. What are a few concrete illustrations of uncompensated effort by you or other members of your firm for improvement of the law?

Firm No. 1. Speaking at seminars - State Board of Bar Governors - Legal Aid - Maricopa County Bar - Supreme Court Committees.

Firm No. 2. A member has been Chairman of the Mineral Section (now the Natu-

ral Resources Section) of the American Bar Association; has served on the Board of Visitors of the College of Law of Arizona State University; and has served on the Supreme Court's Committee on Examinations and Admissions.

A member has been President of both the Maricopa County Bar Association and State Bar of Arizona and has been active in the organization of continuing legal education programs on behalf of the State Bar and the Arizona Law Institute.

A member has served on the Board of Directors of the Maricopa County Legal Aid Society.

A member has served on the Board of Directors of the Maricopa County Bar Association; has served nine years on the Supreme Court's Committee on Examinations and Admissions; has been a Lawyer Delegate to the Ninth Circuit Judicial Conference (serving on the Trial Practice Committee

and presenting papers to the Conference on several occasions); has been a member of the Board of Visitors of the law colleges of the University of Arizona and of Brigham Young University; has written articles published in the California Bar Journal and in the Arizona Law Review; and has presented instruction in continuing legal education programs on the Uniform Commercial Code, the use and effect of mineral reservations in patents and deeds, and other subjects.

Other members of the firm have supervised and participated in the Maricopa County Bar Association program of presenting instruction to high school students regarding legal concepts; participated in programs to explain legal concepts to grade school students; sponsored an Explorer Post of the Boy Scouts of America to encourage boys to consider legal careers; participated in the Maricopa County Bar Associ-

ation's "Bridge the Gap" programs for recent law school graduates; and participated in other State Bar and County Bar Association activities.

(3a) Firm No. 3. Every lawyer in our office spends a considerable percentage of his time in uncompensated effort for the improvement of the law. You asked for a few concrete illustrations. A member served from 1967 to 1968 as President of The American Trial Lawyers Association. This involved close to 100% of his time for that full year and literally thousands of hours of uncompensated effort for many years prior to his taking office in many other positions which he held going back to 1957. He has also chaired and/or served on many committees of the State Bar of Arizona, the Maricopa County Bar Association, the American Bar Association, etc. Another member's service has paralleled his and, as you know, this member is currently

serving as President-Elect of The Association of Trial Lawyers of America and will spend close to 100% of his time discharging the duties of that office for the ensuing year. A member is currently serving as Chairman of one of the major committees of ATLA and has also devoted hundreds of hours to state and county bar association committee work. A member is the Immediate Past President of The Arizona Trial Lawyers Association. In short, every lawyer in our office has performed a substantial number of services to the bar, without personal compensation, and is encouraged by the firm to do so.

Firm No. 4. The writer spent approximately two years on the Criminal Justice Committee, drafting the Arizona Rules of Criminal Procedure which became effective September 1, 1973. Additionally, he worked on the following committees: Judicial Evaluation Committee; Subcommittee of the Uniform

Rules of Criminal Practice, United States District Courts, Ninth Judicial Circuit; City Rules Committee; Midas Program; and the Arizona Criminal Jury Instructions Committee.

Firm No. 5. Lawyer A: Chairman, Rules of Professional Conduct, State Bar, 20 years; Chairman for many years, Standing Committee to draft original rules and later amendments to the Rules of Disciplinary Procedure; Member, Committee on Judicial Qualifications (reviews and takes action against judges for infractions or incompetence); Board of Visitors, ASU Law Society; Board of Directors, ASU Law Society; Membership on Board of Governors and Vice President of State Bar.

Lawyer B: President and one of founders of ASU Law Society.

(3b) Lawyers C & D: Committee on Examinations and Admissions, State Bar.

Lawyer E: Local Administrative Com-

mittee; Board of Visitors, U of A; Board of Directors, U of A Law College Association; Committee on Uniform Jury Instructions; Committee for State Bar Compulsory Insurance; Maricopa County Bar Long-Range Planning Committee.

Lawyer F: Board of Visitors, Rueben Clark Law School, BYU; Ninth Circuit Judicial Council to Study Improvement in Administration of Justice.

Lawyer G: Member, Tax Advisory Council to Improve Internal Revenue Act.

Lawyer H: Co-Chairman, Fee Arbitration Committee.

Lawyer I: Years of service to the bench in devising court and judicial procedures.

Lawyer J: Committee to Study Reorganization of Justice of the Peace Courts.

Various firm members: Local Administrative Committee for processing ethical violations; Examiners to Local Administra-

tive Committees; Counsel to the State Bar on three formal appeals to the Supreme Court in admissions cases.

Firm No. 6. Concrete illustrations of uncompensated effort for improvement of the law are as follows:

(a) Active participation in the programs of the Maricopa County, State of Arizona and American Bar Associations;

(b) Representation of low-income minority people at no charge for services;

(c) Active participation in State Bar Continuing Legal Education programs;

(d) Services as Bar counsel and Chairman of State Bar Administrative Local Committees;

(e) Participation as counsel and active membership in Valley Big Brothers, maintenance of active membership in State and local Chamber of Commerce and numerous civic-oriented activities.

(3c) Firm No. 7. A few illustrations

of uncompensated effort on the part of members of our law firm for the improvement of law are as follows:

Service on numerous committees of the American Bar Association; Service on numerous committees of the State Bar of Arizona; Service on the Board of Directors and numerous committees of the Maricopa County Bar Association; Numerous articles written for legal publications; Participation in seminars conducted locally and throughout the United States; Teaching in law schools; and Testifying before numerous committees of the State Legislature on pending legislation.

Firm No. 8. One of the principal recent services performed by this firm involved our participation in that certain action entitled Ethics Opinion No. 74-28, wherein the Arizona Supreme Court did on April 9, 1975 render its decision which effectively permitted attorneys in firms

and private practice to continue to sit upon public boards and governments. A substantial number of hours was devoted to this task. Historically, all of us have served upon one or more State Bar committees and we number at least one former president of the State Bar of Arizona among our partners. Currently no less than two of our members serve upon administrative committees and give freely of their time to the furtherance of the law and the profession. Any number of other instances could be cited but they would be repetitious.

Firm No. 9. Personnel of this law firm have participated or are members of the following groups and committees:

State Bar; Maricopa County Bar; Public Interest Law Firm; Ethics Committee; Continuing Legal Education Services; American Judicature Society; Board of Visitors of College of Law; Committee on Admissions and Legal Education; Chairman

of Environmental Law Section of State Bar; Chairman of Section on Real Estate Law; Chairman of Medical-Legal Malpractice Panel; Prosecution of Ethics Violation Disciplinary Committee; and Committee to Evaluate Bar Examination.

Firm No. 10. This firm like most other major Phoenix law firms, has contributed toward improvement of the law by participation in the Bar activities at the County, State and National levels, including invaluable committee work. We have also contributed to legal publications, including law journals.

(3d) Our members have voluntarily participated in numerous legal education projects serving as panel members. The firm feels a strong sense of obligation to participate in professional societies within the various specialities of the firm members. All of such specialty groups put on continuing educational programs in which

we have participated.

The expenses of all such participation has been borne by the firm. It would be impossible for me to recount all of such professional activities, but they would number in the dozens each year. Given sufficient time to research the question, I could of course itemize them in greater detail.

Firm No. 11. The following are a few concrete illustrations of uncompensated efforts by me and other members of the firm: membership on the Civil Practice Committee of the State bar, on the Administrative Committee, on the Uniform Jury Instruction Committee, officers of the Maricopa County Bar Association, bar counsel for the Administrative Committee, etc.

Firm No. 12. Four members of this firm are active in the work of the American Law Institute. Members of the firm have been involved in the drafting and en-

actment of the recent federal disqualification of judges act, 28 U.S.C. § 455; the revisions of the Uniform Commercial Code in Arizona; the preparation of a new corporate code; and the preparation of the Uniform Landlord and Tenant Act. One member of the firm was chairman of the committee which prepared the rules of evidence now pending in the Supreme Court. Other examples are legion. Matters of this kind are recorded by the office under a general heading of public service on a computer system. The calculation for public service at our average hourly rate for our year to date (10 months) is \$234,146.

Firm No. 13. We hesitate to single anyone out because many of us are involved in these activities. Lawyers A and B have both served as president of the Maricopa County Bar and the State Bar of Arizona. Lawyer B has devoted substantial time to the work of the Supreme Court Committee on

Uniform Jury Instructions. Lawyer C has been active in work on Rules of Procedure and the Law of Defamation. Lawyer D has devoted considerable time to the enlightenment of practitioners in the tax field. Lawyer A was one of the initial trustees of the State Bar of Arizona Client Security Fund.

(3e) Firm No. 14. Our firm has provided three members of the Board of Governors of the State Bar, two of whom served as President. We have supplied two members of the Board of Directors of the County Bar, including one President. One of our members has been a member of the American Bar Association House of Delegates since 1960, has served a term on the Board of Governors and is currently the Chairman of one of its important Standing Committees and a member of the Board of Directors of the National College of the State Judiciary. Two of our members have been Chairmen of

Local Administrative Committees of the State Bar. We have had many members serving on other American, State and County Bar committees. One of our members chaired the 1967 Citizens Conference on Arizona Courts and was actively involved in the 1972 amendment to the Arizona Constitution providing for nonpartisan merit selection-retention of all state appellate court judges and of all Superior Court judges in the two most populous counties. Members of the firm have acted as speakers or panel members at continuing legal education programs for lawyers and judges.

All of the foregoing has been uncompensated.

(4) QUESTION NO. 4: What are some illustrations of charity or deliberately discounted professional services performed in your office for those unable to pay?

Firm No. 1. Prefer not to state.

Firm No. 2. We regularly advise and

represent, at reduced charges or at no charge, individuals or organizations who appear to be in need of legal services and whose situations or purposes appear to us to warrant reduction or elimination of the normal charges.

Firm No. 3. Our firm serves as Arizona counsel for the United Farm Workers on a completely pro bono basis. We also provide free legal service to many charitable and fraternal organizations in town, such as the Arizona Heart Association, the American Civil Liberties Union, the American Arbitration Association, the Phoenix Jewish Community Center, the Fraternal Order of Police, Southwest Ensemble Theatre, etc., etc. We perform deliberately discounted professional services routinely in cases in which the injuries are very serious and the collectibility limited, e.g. the very badly injured person with no funds to proceed against other than a limited

policy of liability insurance owned by the adverse party.

Firm No. 4. The writer is a member of the Lawyer's Referral Program, and to date, although he has interviewed approximately twenty people, he has never charged any of these people for consultation. Additionally, he is a member of the Court Appointed List for Indigent Defendants, which represents indigent defendants where a conflict exists with the public defender and services are performed at a drastically reduced rate.

Firm No. 5. Examples: Three to five cases at all times involving unemployed Mexican immigrants; three recent juvenile cases involving sex molestation of young girls. During the founding of a certain hospital and for twenty years thereafter we represented the hospital without charge. Arthritis Foundation, American Cancer Society and many others represented

without charge.

Ten percent of the recorded hours of all lawyers in the firm is "no charge time" and a substantial portion of this is for pro bono or charitable cases.

(4a) Firm No. 6. Illustrations of charitable or deliberately discounted professional services:

(a) Representation of low-income minority group home buyer entangled in complications of failing escrow establishment and arranging for transfer of title to homes with Receiver;

(b) Counseling of many low-income persons re workmen's compensation claims, without compensation to the firm, leading to the payment of benefits;

(c) Attending to handling of tax protest and relief from tax assessments for low-income minority home owners and attending to low-income home owner transfer between deceased person and survivor, with-

out charge.

Firm No. 7. Work performed on numerous matters referred by Legal Aid;

Work performed for underprivileged persons referred to our offices from a variety of sources;

Legal services rendered to:

Arizona Foundation for the Handicapped; St. Francis Xavier School Board; Cancer Crusade; Phoenix O.I.C.; City of Phoenix Municipal Housing Corp.; Northside Mental Health Project; Montessori School; Phoenix Symphony; Seventh Step Foundation; Inner City Food Co-op; L.D.S. Church; and Children's Theatre.

Firm No. 8. As a matter of long standing firm policy, our fee structure has been in part predicated upon the ability of a client to pay for the services rendered. Within the past year the writer has on at least two occasions performed a necessary legal service for no

charge because the client was indigent or unable to bear even a nominal fee. One of these involved the title to a modest home, the other a question of family visitation rights.

We have made no effort to detail the voluminous services of a charitable nature which have been performed for the betterment of the community by members of this firm, which range from presidency of hospital trustees to presidency of the Maricopa Chapter of the March of Dimes, and many, many others. It has been our policy and philosophy that services of such a nature are an integral part of the responsibility which our profession owes to the community.

Firm No. 9. Members of this law firm have provided the following services free of charge to those unable to pay:

Provided legal services to minorities;
Made office space available for xeroxing
and use of office facilities to a public

interest law firm; and renders services to Legal Aid.

Firm No. 10. From the time of its formation, it has been the policy of this firm to do pro bono work for deserving clients. We willingly participated in Legal Aid activities for many years without compensation. To my knowledge, we were never asked to provide legal services to an indigent person when we refused to do so. In recent years we have continued this policy on a less formal basis as a matter of internal decision within the firm.

I personally have been called upon within the last couple of years to provide legal services to indigent minors who have been charged as juvenile offenders. Indeed, even within the past few months I have appeared in Phoenix Traffic Court on behalf of indigent clients who could not afford to pay even the modest traffic fines

which would have been imposed had they been found guilty. I recite these two specific personal areas of pro bono work by way of example only.

I would estimate that within the last year there have been no fewer than 150 occasions when our firm has provided legal services completely free of charge and many more occasions when we have charged a reduced fee because of financial inability of the client to pay our normal fee.

Firm No. 11. The following are some illustrations of professional services performed in our office for charities: churches and church related societies.

Firm No. 12. This office for a period of years regularly manned the legal aid office on a weekly basis. Even though such intense activity has ceased, the dollar calculation of the time put into legal aid the last 10 months is \$21,736.

The office has the general run of

cases from anonymous poor persons. Illustrations in a group of spectacular cases are the service of representing Ernesto Miranda to the Supreme Court which involved a dollar outlay too great to face; and by court appointment, the representation of all prisoners at the State penitentiary at Florence in the disciplinary litigation in the Federal District Court. Our records show a total hourly loss to us of \$19,300 in this matter.

Firm No. 13. One member has served many years without compensation as Chairman of the Board of Good Samaritan Hospital, now Samaritan Health Service. Another has served as the national president of Florence Crittendon Homes. In connection with various charitable organizations which several of us have served as officers and board members, we have provided a variety of legal services without charge. We frequently provide services to

individuals without charge or at a reduced rate when they cannot make payment; frequently these individuals are employees of clients, but that is not always the case. These include services in the area of domestic relations, real property, and minor criminal matters.

Firm No. 14. We have actively participated in local legal aid efforts since 1947, including the providing of free legal services in pre-federal funding times. In addition we at all times have provided and now provide free or deliberately discounted services for persons unable to pay any fee or a regular fee.

Members of the firm also serve and over the years have served on governing boards of local tax-exempt organizations.

* * * *

DEPOSITION OF ROBERT G. BEGAM, ESQUIRE
(Title omitted in printing)

* * * *

The Complainant was represented by its attorney John P. Frank, Esquire.

The Respondents were represented by their attorney William C. Canby, Jr., Esquire.

Also present: Van O'Steen, Esquire.

The following proceedings were had:

ROBERT G. BEGAM, ESQUIRE, being first duly sworn by the Notary, was examined and testifies as follows:

EXAMINATION

BY MR. FRANK:

Q. Would you state your name for the record?

A. Robert G. Begam.

Q. Are you engaged in the practice of law in (3) Phoenix, Arizona?

A. Yes.

Q. What is the name of your firm?

A. Langerman, Begam, Lewis, Leonard & Marks.

Q. How many attorneys do you have

in that firm?

A. Eleven.

Q. How long have you been engaged in the practice of law in that firm or some antecedent?

A. I was first admitted to practice in New York in 1952; admitted to practice in Arizona in 1956.

Mr. Langerman and I established our predecessor firm under the name of Langerman & Begam in 1957.

Q. Between 1957 and the present time, has the practice of your firm been heavily in the field of various torts?

A. Yes.

Q. If you have some way of calculating a percentage, in a rough, round number sense of the amount of the work in the office which is tort work, however you measure, by number of people working, by dollar volume or anything else, what is the percentage?

A. I would say by most any measure would be between 80 and 90 percent of our practice.

Q. And the torts with which you deal are negligence and products liability, I know. What else?

(4) A. The full range of civil trial practice, with a heavy concentration on automobile law; medical malpractice; products liability; railroad; air crash.

Q. Mr. Begam, are you associated with some national association of lawyers?

A. Several.

Q. Several, I assume.

If I may go straight to the point, you are associated with the American Trial Lawyers Association, I believe.

A. Yes.

Q. What are the general interests of the members of that association?

A. It's the Association of Trial Lawyers of America, and the general interests

are parallel to the interests of my firm; a heavy interest in the full range of civil tort litigation; consumer litigation; labor litigation; class action litigation; workers' compensation litigation.

Q. But basically, it's tort practice, for the most part?

A. In the broad sense of that word, yes.

Q. Approximately how many members are there of that association?

A. 25,000.

Q. Do you hold any office in the association at the (5) present time?

A. Yes. I'm currently president-elect.

Q. Nationally?

A. Yes.

Q. In connection with your affiliation with that association, have you traveled widely throughout the United States?

A. 49 of the 50 states.

Q. Which one did you miss?

A. Alaska.

Q. When are you going?

A. Next year.

Q. Have you talked to tort lawyers in all of those states at one time or another?

A. Yes.

Q. Does the association have any recommended minimum fees for its members?

A. No.

Q. Has it ever had such recommended minimum fees?

A. No.

Q. Is there any disciplinary or ethical system within your association dealing in any way whatsoever with the matter of fees, or is that left up to the individual lawyers and the practices in his own state?

A. For the most part, it would be left up to the (6) ethics administration in the individual states.

We do have an ethical standards for membership in the association, and it's

perfectly possible for one to be expelled from the association without disciplinary action being taken within the state. It would be unusual.

Disciplinary action, such as disbarment or suspension within the state would automatically result in similar action in the association.

Q. What are the ethical standards to which you have just referred for membership in the association? Is that a published document of some sort?

A. I'm not sure. I don't think so. I don't think so.

We do have a mechanism that's comparable to the sort of thing that most of the state bar associations or state bar ethics committees have, that can be triggered by a report of one member on unethical conduct of another.

With respect to fees, it would more likely be abuse of Canons of Ethics with

respect to referral fees.

Q. Mr. Begam, what is the practice of the members of your association in respect to advertising?

First, I will break that down into subunits. What is the practice of your own office in respect to advertising?

A. We don't have it.

(7) Q. Secondly, what is the practice of ATLA members in the state, so far as you know in respect to advertising?

A. So far as I know, they would adhere to whatever the standards are in their state.

It's my understanding that in some states recently there have been very limited relaxations in the prohibition of advertising in Yellow Pages and law lists, and so forth, with respect to certain specialty ratings.

New Mexico is an example, and I would assume that our New Mexico members

follow the limited standards in those states, and where there are limited standards on advertising, as they exist.

Q. That is to say by law lists and in the Yellow Pages, wherever permitted?

A. Yes.

Q. But that would be in common with all lawyers in the state; is that correct?

A. Yes.

Q. What phenomena known as -- and I quote the phrase "ambulance chasing" -- what does that phrase connote to you?

A. Soliciting cases. Direct, overt solicitation of legal business.

Q. What is the attitude of your association, either in the state or nationally, as you are able to tell me, (8) towards such practices?

A. I would say representative of the general attitude of the Bar, that is opposed to it.

Q. Have there been proposals seriously

considered in your association to recommend abandonment or major modification of advertising principals of the Canon of Ethics of the American Bar Association in most of the states?

A. If you are talking about the recent action taken by the ABA, there was an analysis of that action by the Professional Responsibility Committee of the ATLA, and that committee is in communication with the corresponding committee in the ABA on two matters.

One, we felt that the ABA pronouncements on permission of advertising were too broad, and we urged restriction of those, in the sense that it was implied, as we read it, that under certain circumstances, multi-media advertising would be endorsed, and we were opposed to that.

Secondly, with respect to the specialty lists contemplated, it was our position that to the extent there are

specialties in law lists or in Yellow Pages. One of the logical specialties would be trial practice, and we urged that they and we get together to develop a professional standard with respect to that specialty.

(9) Q. Mr. Begam --

A. I might add that most of the trial lawyers in the ABA are also our members, and what we were, in effect, saying, "Why don't you work with us on developing those standards?" And the preliminary response has been quite affirmative from the ABA.

Q. But at no time has your organization proposed that there be general abandonment of the standards of solicitation or the standard of advertising which have long existed; is that right?

A. Quite to the contrary. Our reaction to the ABA announcement was that we thought it might be drifting too far in

that direction.

Q. Now would you tell us, sir, why do you have this attitude, that the traditional standards should be firmly maintained, which I take it is your attitude?

A. My personal attitude.

Q. We can't separate your personal attitude from the attitude of the president-elect of the ATLA; can we?

A. Obviously. But I hasten to say that I am not speaking for 25,000 members or the board. I can tell my own reasoning.

Q. Would you be so good?

A. Yes. First, a matter, I guess, of dignity, not in any great abstract sense, but I have the feeling that (10) the dignity of a learned profession is seriously compromised by shopkeeper advertising. We have traditionally obtained clients through executing well our professional duties on behalf of our clients,

through development of reputation among our peers and in our community, not only through service to our clients, but through service to the public and to the community and to our country. That complex of traditions leads to our right to call ourselves a learned, independent and dignified profession. Dignified in that sense.

I have a feeling that those values are compromised by commercial advertising.

Q. From that standpoint of public interest, and not of the profession or of the professionals, but of the general public which needs legal services, do you have an opinion as to whether advertising might be of service in bringing to their attention who can offer services, prices and so on?

A. Yes, I do have an opinion.

Q. What is that opinion?

A. I think another aspect of our pro-

fessional duty is accessibility or availability of our service. I think if there is any one area in which we are susceptible to criticism, it's been our failure to deliver legal services as well as we might, particularly to certain segments of (11) the public.

I think we are in the process of trying to correct that through specialization programs, mandatory continuing legal programs, certification programs that most of the national bar associations and many of the state bar associations are examining now. If and when we ever develop those programs, then I would think it would make sense to promulgate those lists of specializations to the public. Again, in keeping with the dignified and learned profession.

I would hope, at the most, in the Yellow Pages, the way the medical profession does. At the least, in law lists

that would be circulated among other professionals. I don't think we are ready for that yet, because unlike the doctors, we have not developed widespread objective criteria for certifying specialists.

Q. From the standpoint of the public interest, Mr. Begam, take the matter of contingent fees; Would it be of advantage to the public, in your opinion, to carry newspaper advertisements to the effect that "This firm specializes in tort law; we handled 217 auto cases last year; our average recovery" was so and so much; "our percentage fees" are thus and such, and so permit some other firm, then, to put in an ad offering a slightly lesser fee, and so on; would that be a desirable thing for (12) the purpose of bringing knowledge to the public of available services, in your opinion?

A. I don't think so, no.

Q. Why not.

A. I think that to the extent that lawyers get involved in commercial advertising, what the public is most likely to learn is who is the best advertiser; not who is the best lawyer.

Q. You find something inherently misleading in the process, I take it?

A. Precisely.

Q. What?

A. Just that. I think that the advertising industry has developed to a sufficient extent so that the best ad sells the product, rather than the best product being sold.

I think there is an inherent misleading aspect to advertising professional services, particularly, when we are not selling toothpaste, which is a sort of objective product. We are selling a subjective service, that is, in a sense peculiar to our own profession. The lawyer-client relationship is a peculiar relation-

ship. You don't sell that relationship; you don't promote that relationship; you don't puff in order to obtain that relationship. That relationship develops and matures as a result of the client (13) seeking service, and, in my opinion, making the best effort he can to obtain the best lawyer for that particular job.

Q. On the basis of your travels throughout the United States; your discussions with lawyers from around America, or members of your association, have you formed an opinion as to whether substantial numbers of your organization have views substantially similar to yours on this subject?

A. I really can't say substantial, when we are talking about a 25,000 member association, Mr. Frank, because that would probably imply many, many thousands, and that would not be true.

Certainly, I think I have expressed

the views of the leadership of the association.

Q. Let me pause for a moment with the practice of tort lawyers in the State of Arizona. If young lawyers going into the practice don't advertise, how do they develop tort practices in this community?

A. I'll answer that question in a second, but let me first say that I would think the young lawyers coming into practice would be particularly disadvantaged by general commercial advertising campaigns. I would think the large firms would be substantially advantaged. A 60-man law firm would pay no more, presumably for a full (14) page ad in the "Republic" or a bulletin board on the corner of Central and Van Buren than would a sole practitioner. Obviously, the 60-man law firm could get a lot more mileage out of it, and presumably would have a greater resource to conduct heavy campaigns. I

think the young lawyers would be particularly disadvantaged.

Q. How does the young lawyer get involved going into practice in this community? What's involved?

A. I think he gets involved in community service; I think he gets involved socially. Many have gotten involved politically in the community, and he does a good job on handling the business that he gets.

Q. Have young people regularly been able to make successful starts, so that within a few years they are making reasonable livings in this branch of the work?

A. It's been my observation that there has been almost direct relationship between the competence and energy of a young man and his success. At least in this community.

Q. And are youngish lawyers of real competence successfully developing prac-

tices within a few years of their entry into the profession here in the tort field?

A. I believe so, yes.

MR. FRANK: Your witness.

(15)

EXAMINATION

BY MR. CANBY:

Q. Mr. Begam, you said that the position of the ATLA was opposed to direct, overt solicitation.

What kind of indirect, nonovert solicitation -- maybe you wouldn't like to call it solicitation -- but could you elaborate a little bit of why you put the qualifiers in?

What kind of things would be permissible?

A. Well, I suppose if a lawyer joins a country club and lets it be known to the other members of that country club that he is a lawyer and will handle respectable

law business, that's a form of solicitation.

I think that would be about as extreme an example that I can give of what I would mean by solicitation that's not direct or overt.

Direct or overt solicitation, I would think an extreme form of that would be the ad in the newspaper that led to this particular proceedings.

Q. Now that, I assume is partly what you meant when you were describing how young lawyers start their business, they get active socially; maybe politically.

It is a problem, I suppose, of getting known, apparently; isn't it?

A. That's certainly a part of it.

(16) Q. You would accept, wouldn't you, the proposition that not all lawyers are equally competent, even though they are licensed?

A. Yes, I would.

Q. What is it about being a member of

a country club that would inform a potential client about the lawyer's competence?

A. Well, presumably the mere putting an ad in the "Arizona Republic", saying "I am a member of Phoenix --"

Q. That isn't the question. I see. I misunderstood.

A. Putting an ad in the newspaper, saying, "I'm a member of the Phoenix Country Club", would not inform the public at all of the lawyer's competence, but belonging to a club where you mix with and talk to and get to know other people; giving them an opportunity to size you up and see what kind of a guy you are; how bright you are; how articulate you are, and various other tools that a lawyer has to sell.

Q. You mentioned, also, that you felt young lawyers would be disadvantaged more than most by unrestricted, direct public advertising -- or perhaps "unrestricted" is too strong, but advertising in newspapers

of general circulation; things like that.

You said the 60-man law firm pays the same for an ad, but gets more mileage out of it. I didn't (17) understand that.

What do you mean?

A. Well, I guess the simplest example is that it seems to me that in the commercial word (sic) the advertisers that are the most successful are the ones that have the most money to spend on advertising. Most of the products that we buy are nationally advertised products. The heavily-media infested civilization that we live in has led to bigness, corporate bigness, to the point where there are only three manufacturers of automobiles, and a handful of manufacturers of cigarettes, and so forth in the United States.

I think the same could be foreseeable in the professions, if we went to large-scale multi-media commercial advertising in the professions.

Lewis & Roca, by way of an example, a big law firm in this community, could, I'm sure, along with other large law firms in the community, get pretty much a corner on all of the billboards and a pretty good upper hand on most of the effective media space. They have the resources to do it. It's expensive.

Q. That would be sort of a monopolization of media, you mean?

A. They could certainly do that.

That portion of the media that would be devoted to this kind of advertising.

(18) Q. Then, getting a corner on the media would be competitively harmful to the younger lawyer and the small one?

A. Yes. I'm not suggesting that it's restricted to think that any of those firms would, nor am I suggesting that all of the firms have the resources to buy up all of the time. What I am saying, they have the resources to compete more effectively than

the young lawyers starting out, and probably to his disadvantage. That's what I mean.

Q. It depends on what kind of clientele they are seeking to attract.

A. I don't know what kind of clientele you are seeking to attract when you put an ad in the "Arizona Republic". You are seeking to attract the 100,000 readers of the "Arizona Republic", I suppose.

Q. One of the things that appeared in the ad that's involved in this case was that the respondent firm would do a name change for a particularly set price that was advertised. Do you think there are such tremendous variations in the product of a name change, it's impossible to advertise a price and stick to it?

A. I would suspect that the answer to that is that there are so few variations, that someone seeking a name change really doesn't need a lawyer.

Q. Has anyone publicized that?

(19) A. I would hope that the State Bar in its public information program would publicize that. I would certainly urge them to.

Q. So would I.

We started this direct examination, or early in it somewhere, with something about the contingent fee. Contingent fees have been under considerable criticism in the individual case, because they seem high, at least when the recovery is substantial.

What is the justification for the percentage of the fee charged?

A. Well, I don't accept your premise.

Q. I didn't say that they were too high, I say that they have been criticized.

Do you accept that?

A. I accept that they have been criticized by certain segments of society.

Q. Right. You consider that criticism unfounded?

A. Yes, I do.

(Recess taken.)

A. (Continuing) You want my ideas of what I think whether contingent fees are bad things and/or good things?

Q. Yes, one of them.

A. Principally, the one area of the practice where there is a minimum of problem of delivery of legal (20) service is the contingent fee case. The poorest man in the community can get the best lawyer in the United States to represent him, and without the contingent fee, he can't. There is no way that he can find his way into a court. It's that simple.

To what extent in this deposition do you want to go, to turn it into a philosophical debate as to the contingent fee?

Q. Not too much. One reason the poor man can afford this, partly if it turns out he loses, at least it's not that much of a legal fee?

A. That's correct. It's more than that.

He can't afford a lawyer on the noncontingent basis, even on the minimum rates that are sometimes advertised in newspapers.

Q. Right.

A. He couldn't even afford a name change.

Q. Okay. That means, then, that a firm like yours necessarily figures that they will sometimes do a great deal of work and get no fee, in the rare occasions when you might wind up with no recovery at all?

A. Thank you.

Q. Is that correct?

A. Those rare occasions are sometimes rather crippling, and even firms that consider themselves fairly competent and experienced in this field, as I do consider (21) our firm, I can state you some pretty good examples to us: 1,200 hours spent in Ft. Smith, Arkansas, with a medical malpractice, with a big fat zero.

Q. But the fact that turns out there is no fee in the end does not affect the quality

of service that's given to the client, I assume?

A. No. Interestingly enough, the cases that result in zero fees result in the ones that the quality of service to the client was the greatest; the result wasn't so good.

Q. Mr. Begam, are you also a member of the ABA yourself?

A. Yes, I am.

Q. Have you been an officer in that?

A. No.

Q. There was some reference in your testimony to the reaction of the ATLA committee and leadership to the ABA proposal on recent advertising.

It's my understanding there were two proposals. One was the original proposal by the ABA committee. The ABA committee's proposal would have authorized general advertising in media of publications, is my understanding, and the ABA's superior body came out with a much less radical, shall

we say, proposal. Which one are you referring to when you talk about the reaction?

(22) A. I was referring to a reaction to the original committee proposal. As I understand it, it wasn't that they would authorize it directly; it is that they would authorize it if it was adopted by the various states. I think.

Q. Right.

A. In terms of our reaction -- we reacted first to the committee proposal, announcing our opposition to multi-media advertising; general circulation advertising under any circumstances at any time.

Then, the reaction to the more recent proposal related primarily to the specialization aspect of it and the designation of specialty groups and the need for designating and certifying trial specialists, and our willingness to work with them on that.

Q. You mentioned that one of the possible places in which the bar in general

could be criticized is in delivery of legal services to certain segments of the public. You didn't identify those segments. Did you have in mind a particular segment?

A. Middle class people and lower class people, in particular, and poor people; I would say now to a lesser extent than before. We are doing a better job on that than we did in the past, but not a particularly good job.

Q. Do you do any significant amount of noncontingent (23) fee practice?

A. We all do -- I would say the answer (sic) to that is yes, but do not do -- and maybe this is the thrust of your question -- a great deal of per diem or per hour work. I would say maybe 10 or 15 percent of our practice is, of our remunerative practice is that. We all do a great deal of promono (sic) work.

Q. At what point is the amount of fee made known to a client who comes into your office?

A. Well, in the first conference with the client we advise the client the basis for charging. If it's a contingent fee, the client is actually given a written contract, which we use in all of our cases.

If it's an hourly or per diem rate, we tell them what our hourly or per diem rate is and how it's counted.

They don't know what the ultimate fee is going to be, because we don't know how long it's going to take. To my knowledge, we don't do any flat fee work.

MR. CANBY: Thank you, Mr. Begam.

MR. FRANK: I have no redirect.

* * * *

DEPOSITION OF WILLIAM HELME, M.D.
(Title omitted in printing)

* * * *

WILLIAM HELME, M.D., being first duly sworn by the Notary, was examined and testifies as follows:

MR. FRANK: Mr. Canby, I note for the record that my name is John P. Frank, and I

make an appearance in behalf of the Complainant. Would you note your appearance.

MR. CANBY: William C. Canby, Jr., and I am entering an appearance for the Respondents.

* * * * *

EXAMINATION

BY MR. FRANK

Q. Doctor Helme, would you please state your name for the record?

A. William Helme.

Q. What medical degrees or specialties are you associated with?

A. Well, I'm a neurosurgeon. I'm board-certified in that specialty.

I have an M.D. Degree, and I also have a Master of Science Degree in neurosurgery, from the University of Minnesota.

(5) I had my specialty training at the Mayo Clinic in Rochester, Minnesota.

I have been in private practice of neurosurgery in this community for 18 years.

Q. Doctor Helme, are you, in the first place, associated with any branches of the Medical Association which have to do with the administration of its ethical standards?

A. This year, I'm Chairman of the Professional Committee of the County Medical Society.

Q. What is that committee?

A. It is concerned with dealing with any problems that arise with respect to medical ethics or disputes or differences between physicians.

Q. Doctor Helme, in the period of your professional training and your work up to the present time, have you had occasion to become intimately acquainted with the traditions and practices of the medical profession in respect to advertising?

A. Not especially. I think I'm reasonably well-informed in that area.

My present job, as Chairman of the Professional Committee, requires that I be

well-informed.

I was President of the County Medical Society in 1970, and I suppose became involved in ethical matters (6) from time to time in that capacity.

Q. In that connection, are you yourself acquainted with the practices of the medical profession in regard to professional advertising?

A. I believe so. Yes.

Q. Would you tell us, please, what are those practices?

A. The ethical practices of the medical profession?

Q. Well, if the question is confusing, let me put it over again.

A. It is.

Q. Do you have a Canon of Ethics similar to the lawyers (sic) Canon of Ethics, with respect to the matter of advertising?

A. That narrows it down a bit.

Yes, I think.

Q. Would you tell us, please, the general substance of the ethical rules of your profession in that respect?

A. I think the most important point that should be made in that regard is that that should be made in that regard is that medical ethics are designed for the protection of the patient, rather than the physicians.

Q. I'm sorry, sir, but I want more basically that: What is the rule of the medical association in respect to advertising?

(7) A. There shouldn't be any.

Q. And this covers newspaper advertising; radio advertising; any kind of media; is that correct?

A. Yes. Now, there are exceptions. For example, a physician is permitted to announce the opening of his practice in a prescribed manner, rather simply. The announcement shouldn't go beyond stating

his name, the address of his office, his hours, and a brief curriculum vitae.

Q. We are taking this deposition in your office; isn't that correct?

A. Yes.

Q. Would you name, please, three types of service that are performed by you or other doctors in this office? Any three.

A. Three types of services?

Q. Yes. Of medical service.

For example, you are a neurosurgeon?

A. Yes, all five of us. There are our names on the door. All five of us are neurosurgeons, and we do all neurosurgical procedures, with respect to the nervous system.

If you wish me to name three --

Q. Name any three, so I can question on any.

A. We do craniotomies, which means any surgery (8) involving the opening of the head.

We also do surgical procedures on the spinal canal.

Q. Let's stop with those two.

A. All right.

Q. Let us suppose, hypothetically, that a person who is a neurosurgeon put an announcement in the paper in the form of an advertisement, simply bought the space, and said, I will perform a craniotomy for you for so and so many dollars, or I will perform a spinal tap and a spinal opening for so and so many dollars. I'll ask you to assume that happens. Would that be a violation to the Medical Canon of Ethics to which you refer?

A. Yes, sir.

Q. Would you explain, sir, whether this has been the practice for a long time in medicine, or is this some recent innovation, this kind of restriction?

A. This has been true as long as I have had any familiarity with the practice of

medicine. It's never been otherwise.

Q. So, as far as you know, this is a rule which has existed so long as doctors have practiced in this country?

A. Yes.

Q. Now, would you tell us, sir, what is the function of such a rule?

(9) Why does the profession have this rule, if you know?

A. Well, this brings me back to the answer I started to make: That our ethics are designed to protect the patient, not the doctor.

I think that there is somewhat a common misconception that these restraints are designed to protect ourselves, and that just isn't true; they are designed to protect the patient.

And you ask me about a doctor advertising his fee for a craniotomy. I smiled when you asked that question. It's ludicrous to even imagine such a thing, because

there must be more than a hundred different types of craniotomies. Each of them is a major surgical procedure, involving an almost infinite complexity of detail that couldn't possibly be specified in any such advertising, and it would appear to me that the few charlatans amongst us would be most likely to seize upon that opportunity to seduce patients and to misrepresent what they would provide, and the opportunities for doing this are just infinite.

A. Doctor, are there some procedures that are so extremely simple that there would be no real possibility of misleading? As, hypothetically, sore throats treated, \$26.50?

(10) A. No.

Q. Why not?

A. The variety is so infinite, even in that simple example that you specified, that to presume to specify in advance the fee that one would charge for this, I think,

would be a distinct disservice to the patient.

We don't treat sore throats, but there is just a vast multitude of types of sore throats of varying degrees of severity and complexity.

Q. Doctor Helme, let me go to the nature of the medical --

A. May I add, I think, one important point?

Q. I wish you would.

A. None of which is apparent to the patient. The complexities; the varieties of these conditions are completely unknown and obscure to the patient.

Q. Doctor, how does a young doctor get started in this community, in his profession?

A. By making such announcement as I described earlier; sending it to all of the other physicians in the community; by having his name listed in the Yellow Pages, and

any other directory.

There are announcements made by all the hospitals of new physicians when they are appointed to the staff. A physician attends the staff meeting and is (11) introduced.

Invariably, a hospital has a newsletter that is circulated to all physicians, and the addition of that individual is proclaimed therein.

Q. Within your observation in this community, have those devices been sufficient so that capable young doctors develop practices within two, three, four, five years here?

MR. CANBY: I don't know whether this is an objection to the form or not, but --

MR. FRANK: Make it, please, and I'll just restate it. How would you like it to be, Mr. Canby?

MR. CANBY: I don't know whether it's objection to form. It's an objection of

whether or not he has any way of determining.

MR. FRANK: Let's go to foundation. That's a good objection.

Q. BY MR. FRANK: In connection with your function as President of the Medical Association, and in other works in the association, have you had occasion to become broadly acquainted with the physicians of this community?

A. Yes.

Q. As a result of your acquaintance with those physicians, have you become enabled to form an opinion to whether young doctors manage to busy themselves at their (12) practices fairly rapidly, early?

A. Yes.

Q. What is that opinion?

A. There is never a problem.

Q. That is to say, that insofar as communication of the community is concerned, the devices you described are sufficient so

that their practices rapidly grow; is that it?

A. Yes, that's correct.

Q. Now, I'm aware that the term "rapidly" is imprecise, but do you have a round number figure for capable young doctors; how many years does it take?

A. I think it's not a matter of years; I would estimate that in a few months doctors are busy almost without exception.

Q. Doctor Helme, when a patient comes to your office, what inquiry do you make of him concerning his ability to pay for the services which he seeks here?

A. None.

Q. Isn't there someone at the desk who checks his insurance, of a sort?

A. Yes, there is, I believe. I never look at it, honestly. I have no knowledge of whether a patient is going to be able to pay his bill or not.

Q. Well, is there somebody in this

office who has (13) that knowledge?

A. I believe we have a form that we fill out that does contain that, but it has nothing to do with their subsequent care.

Q. In short, you accept the patient, if you accept him, without regard to his ability to pay; is that correct?

A. Invariably.

Q. Have you any notion of what proportion of your patients are, in fact, unable to pay the full fees which you would normally charge?

A. I really don't, but it's not very high. I would estimate that our bills are 95 percent collected, or better than 90 percent, I believe. But, on the other hand, there are often, or from time to time there are patients whose bills will be very substantial, more than 500, and nothing is collected.

Q. Doctor, do you devote any of your

time to matters related to the improvement of your profession?

A. Yes.

Q. Would you describe, please, what you do, either in regard to the substance of medicine or in regard simply to improvement of the profession, as you can conceive it?

For example, do you publish papers; do you do (14) researches?

A. More in the line of teaching.

Q. What do you do?

A. Most of our work is done at the Barrow Neurologic Institute, part of St. Joseph's Hospital, and we had 10 residents, 10 young men in training to be neurosurgeons. They spend five years as residents, and a substantial part of my time is devoted to providing that education to those young men.

Q. Are you compensated therefor?

A. No, except that you might -- no, we are not compensated, as such. They do

indeed work patients up and assist in their care.

Q. Do you regard it as part of your professional duty, as you conceive of the function of the medical profession, to engage in that kind of educational work?

A. Yes.

MR. FRANK: I have no further questions at this time.

EXAMINATION

BY MR. CANBY:

Q. When you described that a doctor when he opens his practice is able to briefly state his CV, and send out announcements --

(15) A. Excuse me. I didn't hear the first part.

Q. That he can give his curriculum --

A. Oh, CV.

Q. -- and announcement that he is opening his practice. To whom is that announcement made?

A. To other doctors. I probably should add to that, I believe it is proper for a physician to put such a brief notice in the newspaper.

Q. I see. The purpose of that, then, is to notify prospective patients that he is in business at that location -- in practice? I'm sorry.

A. Correct.

Q. The other announcements that you mentioned, the hospital, when an associate physician makes an announcement, is that announcement made to the public or is that made to the physicians?

A. I believe just to physicians.

Q. And other notices might be sent out within the profession; is that right?

A. Beyond the one you have described?

Q. Yes.

A. By the physician?

Q. Right.

A. No, I think that's it.

Q. Okay. I see. You mentioned that two months is (16) usually enough for a doctor to get viably established in practice, perhaps, here. Do you know any doctors, medical doctors, who have set up practice here in the last couple of years who have been unable to establish a practice?

A. No.

Q. That suggests, then, that there is so much work to be done that it's occupying basically every doctor available; is that right?

A. Yes, that suggests that, I guess.

Q. You mentioned that it would be impossible to set a fixed fee for something like a sore throat, in an advertisement, with proper regard to ethical considerations. Would it be ethical to state a fixed fee in advance for a vasectomy?

A. Would it be possible --

MR. FRANK: Pardon me. Objection,

one, foundation. I don't believe that the witness stated there could not be a fixed fee in advance in a particular case, but merely you couldn't advertise in general.

Is that a fair point, Mr. Canby?

MR. CANBY: I didn't mean to misstate your testimony. I think the question which you previously asked, and answered, was would it be proper for a medical doctor to advertise that sore throats would be treated for \$26.50.

(17) And your answer to that, I believe, was "No".

Q. BY MR. CANBY: Do I correctly state that your answer was "no", because there are different kinds of treatments which might be required for a sore throat?

A. And there is such an endless variety of sore throats.

Q. Would it be possible for a medical doctor to establish in advance and publicize the fact that he will do vasc-

tomies for a fixed fee?

A. I think that's possible. I certainly wouldn't go beyond that verb, though, that it is possible -- adjective.

Q. Are there in medical practice forms of practice in which a doctor knows in advance the particular kind of work are going to pay a flat fee, group practice arrangements, or anything like that?

A. Yes, there are some categories of services, I presume, where one could anticipate a fee that would probably cover it.

Q. If in the occasional case that fee did not cover it, couldn't the doctor simply go ahead and do the work at a loss, as it were?

A. Yes, he could.

Q. In your practice, that occasionally happens, not because you have stated a fixed fee; but because a (18) patient can't pay?

A. Yes.

Q. You mentioned that were advertising permitted, charlatans would seduce and misrepresent, I think were the terms you used?

A. Yes.

Q. In what sense, if a medical doctor were prepared to perform vasectomies for \$125, and advertised that, would that lead to seducing and misrepresenting, seducing the public and misrepresenting to them?

A. First of all, he might be incompetent relative -- I think a point that I didn't make and needs emphasis in that regard, and that is the public is totally incapable of evaluating a physician's competence. I say that without reservation.

A few years ago one of the most attractive, articulate, confident-inspiring gentleman I have ever met had his license revoked, and that's a rare occurrence in this state. He had a solid corps of patients who were willing to testify that he was the finest physician and surgeon.

in the business.

Patients are totally incapable of evaluating the competence of a physician.

Q. You would say, then, that licensure is not a guarantee of competence, much as we'd like it to be?

(19) A. I would say it is not a continuing guarantee. At the time of issuance, it is a reasonable guarantee.

Q. Now, if that doctor does not advertise -- we have already established that all of the doctors are adequately busy within a couple months after being in practice -- if he does not advertise, and is busy anyway, how does his patient know that he is incompetent?

MR. FRANK: Professor Canby, I think you mispoke. Would you like your question read back?

MR. CANBY: Yes.

(Question read by reporter.)

MR. CANBY: I'll rephrase the ques-

tion. Perhaps it's not clear what I was asking.

Q. BY MR. CANBY: You said that the doctor might be incompetent, and therefore, the advertising of vasectomies at \$125 each would be dangerous to the public. If he does not advertise, and is incompetent and still gets patients, as you have said doctors here do, isn't the public equally in danger?

A. No.

Q. Why?

A. Fewer of them are in danger if he doesn't advertise.

If you don't mind, to use an example within my field of craniotomy, presumably, he who is least busy (20) will resort to the unconventional technique of advertising to enlarge his practice, and the patients will never know the physician is competent or not. He has no way to evaluate that.

Q. That is true, is it not, whether the

physician advertises or not?

A. Except that that exposure will be to fewer patients if he doesn't advertise. The inability to evaluate his competence will be a burden upon fewer people. Presumably, invariably advertising works.

Q. Advertising does increase business?

A. Yes, it does. So that the deficiency that you postulate will be imposed on fewer people if he doesn't advertise.

Q. I see. When a doctor advertises and increases the number of his patients, does that patient come from other doctors?

A. It depends --

MR. FRANK: Pardon me. Objection, for one, of foundations, since I believe the testimony would indicate that substantially no doctors advertise. In other words, the question assumes that the doctors are advertising, and therefore, that certain things happen, and I object on the grounds that that's speculative.

MR. CANBY: Do you just want me to preserve that (21) objection?

MR. FRANK: Yes. He may answer if he wishes. I'll merely preserve the objection.

If you restate the question, I will have preserved it.

Q. BY MR. CANBY: You said the advertising would be effective in the sense that it would draw patients into the advertising doctor?

A. I believe so.

Q. Are those patients who would otherwise be going to other doctors?

A. Not necessarily. It might be that the thrust of the advertising would be to persuade the patient that he needs services that he actually doesn't need. So, it might create new patients that wouldn't have otherwise existed, as such.

Q. Might it also persuade a patient that he did need services that he, in fact, needed?

A. It's possible.

Q. If a doctor performs treatment incompetently, and I would include in incompetence the performing of unnecessary treatment, are there other Canons of Ethics or ethical requirements that are violated?

A. Yes.

Q. The doctor then could be disciplined for (22) incompetent performance and/or fraudulent performance, aside from the restrictions on advertising?

A. Yes. The advertising restrictions wouldn't have anything to do with discipline for incompetent performance. That would be mainly in the area of the hospital.

Q. A couple of rather simple questions, but I think we should get it in the record: I assume that you would agree that not all doctors are of equal skill and competence.

A. I would agree with that.

Q. We can also establish probably that doctors would charge different fees for per-

forming the same medical treatment? Different doctors would?

A. Yes.

Q. How do patients generally come to realize that they need the services of a medical doctor?

A. They get sick?

Q. The start to hurt?

A. Or some other disaster befalls them.

In our specialty, the signs of difficulty are usually pretty profound and obvious.

Q. When that patient becomes aware of his need for medical services, how does he find a doctor?

A. Well, again, concerning my specialty, no patient comes to us direct. They are referred by other physicians.

(23) Q. How do they get to that physician?

Most of the people have a physician. If they don't, when they come to this community, many of them will have asked where they

were who would be recommended here; who is known.

When they arrive in a community, the method of getting in touch with a primary care physician is through the Medical Society. Calls are made there frequently.

Q. Do they have a referral service of some sort?

A. Yes.

Q. When the patient is referred by that service to a particular doctor, at what point is he made aware of the fees which may be involved?

A. For the most part, when he arrives at that physician's office, or after the service has been provided.

Q. Does he have any way of knowing what other doctors, or is he told what other doctors would be charging for the same services?

A. That is a minor consideration at this time, I believe, because the majority of

the patients have some type of insurance coverage, and there is a pretty considerable amount of uniformity among fees.

We have, for example, a fee schedule that takes up some 90 pages, and there are a great many variables (24) within that fee schedule, but there is set out therein the broad categories of fees, and a patient has access to that. The most commonly known is the "California Relative Value Schedule" that was first devised in 1954, and that's widely disseminated; is available to patients, and that is a very good indication of what fees will be.

Q. Would it be a violation of the medical profession's ethics to publish that schedule in the "Arizona Republic"?

A. I don't think so. We have an organization that was formed by the Medical Society in 1970, called the Maricopa Foundation for Medical Care. About 90 percent of the physicians belong to that, and the

members agree in advance to accept that fee for the various services, as total payment. And those fees are published, I believe. At least, we would have no objection to them being published.

Q. Would it violate the Canon of Ethics of the medical profession for an individual medical doctor to publish in the "Arizona Republic" the fact that he agrees to that schedule of fees you just mentioned in your last answer?

A. I think so. The fact is broadly known, because there is published a document that lists all of the physicians who are members of this foundation, and (25) therein it is stated that they accept the fee allowed by the foundation, as total payment.

Now, if they, in addition to that, were to publish their name, it would be evidence that they were seeking additional notoriety.

You know, we have confined our remarks

pretty much to advertising and not just publicity, which is really a very similar problem, and --

Q. We are dealing here with advertising.

A. So we don't get into the matter of publicity in this discussion, this deposition?

Q. We don't yet.

MR. FRANK: I will take it up with you on the redirect, a little later.

THE WITNESS: I don't wish to volunteer anything, but I wanted to be sure about that.

Q. BY MR. CANBY: You said that the great number of patients are covered by insurance. You don't have any rough estimate, do you? Did that come out already?

A. I haven't said so. I should know that; I don't, but it's more than half the patients have some type of insurance coverage; substantially more.

Q. In the Yellow Pages, Doctor, there is a notation after your name that your

practice is confined to neurological surgery. What purpose does that serve?

A. I don't know. I suppose -- and I have wondered about that, frankly. It might just as well have said "Neurological Surgery". "Confined to" is hardly necessary.

Q. I didn't mean to be concentrating on those particular words, but the indication that you are a neurological surgeon is inserted for what purpose?

A. I suppose so that I will not get improper calls from other physicians or from patients who are seeking a pediatrician, for example.

There is a general practitioner in Scottsdale, whose name is William Helms, and we do have cross calls from time to time, and I'm sure it would occur much more frequently if I didn't have it indicated there that I am a neurosurgeon.

Q. In other words, it's a way of ad-

vising the public that you do not take certain kinds of cases?

A. Yes, and also other physicians.

Q. And with other physicians, I suppose that it advises them that you do take certain kinds, too?

A. Yes.

Q. Is it common practice for a physician in this county to establish within his own office a fee schedule with his own bookkeeper, and then simply to check the services performed, so that the bookkeeper knows, or some (27) other service person knows how to make up the bill, and in what amounts?

A. Yes.

Q. So that he could check two or three or four different medical treatments or services that he performed, and the bookkeeper would know what to charge from that fact; is that right; because there is a preexisting schedule?

A. Yes. That isn't true of all services, but it is true of some.

Q. What kind of services?

A. Well, here in this office, for example, when a patient is first seen, and it is called a neurosurgical consultation, and there's pretty much a standard fee for that. If the problem is simple, we reduce it below the usual fee, and we will specify to the bookkeeper that that is being done. In a child, it might be less. I don't know what it is. I really don't, what we charge for consultation. I can find out very quickly.

Yes, there is a slip that accompanies the patient, and we do indicate on there the type of service that is provided.

The same is true of follow-up visits, a patient who has had surgery, and comes in for a period of time to be sure that all is well, yes, there is a standard fee for that service.

Q. You don't even have to know what that is, except when you review the schedule?

A. I don't know, so that is true.

MR. CANBY: I don't have any further questions.

EXAMINATION

BY MR. FRANK:

Q. Doctor Helme, I advise you as simply foundation for my question that in the legal profession there is a general prohibition on advertising, which, in turn, is part of a larger prohibition on something called solicitation. So that any ways of reaching out to get business, for example, by going house to house and asking for it and calling up strangers and saying, "Would you bring your law business to me", it would be regarded a piece of the law business for this purpose. I would be regarded as solicitation.

My question of you is: As a matter of medical ethics, are there prohibitions

upon the solicitation in the large, as distinguished from simply newspaper advertising?

A. Yes, there are.

Q. Would you explain, please, what that prohibition is?

(29) A. Such solicitation is prohibited.

Q. What is regarded as solicitation for medical purposes?

A. The things you have just described for attorneys would apply, also, to physicians.

Q. Well now, do you place any limitations upon the seeking of self-laudatory publicity?

A. Yes, indeed.

Q. Is that part of solicitation?

A. Yes, it is.

Q. What are your rules in that regard?

A. That's prohibited.

There is an example in the current

issue of "People" magazine. There is an article in there about a neurosurgeon, and there are some statements like -- it's written, obviously, by a non-medical person, by a reporter -- it includes that "75 percent of all patients with tremor and movement disorders have had their symptoms cured without complication."

There is another statement this neurosurgeon is better than the rest of us, attributed to some unknown surgery.

The cousin of one of our nurses was taken to New York twice by his family, in the last few months, and had a rather exotic unestablished surgical procedure done (30) because he has -- he is spastic, in the common terminology, from a birth injury -- even having access to reliable information with respect to neurosurgery, this cousin of our nurse went to New York twice, at great expense; had the surgical procedure which is described in "People" magazine.

He is no better, and his family are many thousands of dollars poorer. This is what concerns us.

Earlier I said to Professor Canby, and I said it twice, because I thought it was so important, that patients cannot evaluate the competence of physicians, and this type of non-scientific emotional reporting is so disillusioning. People mortgage the farm and --

MR. CANBY: Excuse me. Could I have you restate the question, again?

MR. FRANK Yes.

Q. BY MR. FRANK: My question is: How does -- in your opinion, from your experience and from your observation, how does the practice of solicitation in the medical profession affect the health and welfare of the general public?

MR. CANBY: That's a new question; is that right?

MR. FRANK: Well, it is a question

meant to get behind the answer he is just giving, so that the answer may continue.

(31) MR. CANBY: All right.

Q. BY MR. FRANK: Would you continue, sir?

A. The average person, being able to evaluate the material in that article is seduced to obtain funds by whatever means to go there to be relieved of this intolerable problem that he has.

A few years ago a Canadian surgeon a man of some prominence, said that he could sew the spinal cord back together. An absolute ludicrous statement; totally impossible.

This information was circulated throughout the world, and because it appeals to people and to newspaper reporters, who are equally ignorant in medical manners -- and I say that without criticism -- patients who are desperate for help go to this man to have this done.

He can't do it. It's a totally impossible procedure. And this is why we undertake to control such irresponsible statements.

Q. Now, let me ask you several concluding questions.

Do you have an opinion as to whether solicitation, in general, or advertising, in particular, would serve the public interest in your profession?

Do you have an opinion?

A. Yes, I do.

Q. What is your opinion?

(32) A. I believe that it would serve the public most adversely.

Q. Do you have an opinion as to whether to allow advertising and solicitation would lead to what are commonly called rip-offs, fraud and taking advantage? Would it, in your opinion?

A. I believe it would lead to such events as that.

Q. What, in your opinion, would it do to the standing of the profession, in the sense of the respect which it has held?

A. It would destroy us.

MR. FRANK: That's all I have.

EXAMINATION

BY MR. CANBY:

Q. Doctor, you mentioned that this well-known practitioner said that he could sew up the spinal cord. In plain commercial terms, that's false advertising; isn't it, as you described it?

A. He didn't advertise this. Newspaper people picked it up and amplified it and disseminated it. I think he did say that. Maybe he had become senile. I don't know.

I'm sure you would wonder why wouldn't he be (33) contained by his local profession. I can't answer that. He was, in due course, but by then it was too late.

Q. For some patients?

A. Yes.

Q. If he had advertised this, it would be false advertising? It's an impossible operation; isn't that correct?

A. I'm sure the advertising would be so worded and distorted it might not be technically false.

He could sew it. It might not do any good. It wouldn't do any good, but he could sew it together .

Q. You did say he was finally expelled for incompetence, or like this?

A. I don't have the details on this, but he was dealt with appropriately, I'm sure.

* * * *

DEPOSITION OF MARK I. HARRISON, ESQUIRE
(Title omitted in printing)

* * * *

The Complainant was represented by its attorney John P. Frank, Esquire.

The Respondents were represented by

their attorney William C. Canby, Jr., Esquire.

Also present: Van O'Steen, Co-Respondent.

The following proceedings were had:

EXAMINATION

BY MR. CANBY:

Q. Why don't you just give your name and your office at the Bar?

A. My name is Mark Harrison. I am currently president of the State Bar of Arizona.

Q. How long have you been in practice here, Mark?

A. Since I was admitted, in May of 1961.

Q. As president of the State Bar you have some role in the initiation of their disciplinary proceedings; don't you?

A. Not really in the initiation of it.

The Board of Governors has the power under Supreme Court rules to initiate dis-

cipline by filing a Complaint with the Local Administrative Committee, and as (5) any member of the Board can bring a prospective complaint to the attention of the Board, and refer it for discipline.

Q. What was the route of bringing in this case? Was it your --

A. It was initiated at my instance.

Q. The State Bar of Arizona is an integrated bar, of course, and you have to be a member to practice; right?

A. Correct.

Q. As a member of the State Bar, have you become familiar with many of the practices, in very general terms, of many of the lawyers in Arizona?

A. I think I have a general familiarity with that.

Q. You are, of course, in active practice yourself; is that right?

A. Yes.

Q. To the extent that your Bar duties

permit?

A. Correct.

* * * *

(9) Q. BY MR. CANBY: Mr. Harrison, do you know the source, the drafting source of the present rule against advertising with which the Respondents are charged in this case?

A. Yes.

Q. What is that?

A. The Supreme Court of Arizona.

Q. Does it bear any similarity to the Code of Professional Responsibilities proposed by the American Bar Association?

A. I believe it does.

Q. Would you say that the similarity is exact?

A. I believe it is.

MR. FRANK: Objection. I ask leave to advise my client that it isn't exact.

MR. CANBY: That it is?

MR. FRANK: No, it is not. I believe

the language is different.

THE WITNESS: Excuse me. You are talking about the (10) discrepancies between the rule, as amended in Philadelphia?

MR. FRANK: No.

Could we go off the record?

(Discussion off the record.)

Q. BY MR. CANBY: Mr. Harrison, with the exception of minor changes in wording, the substance, at least, of the present Supreme Court rule and the American Bar Association Code of Professional Responsibility provision regarding advertising is the same; is that correct?

A. I have recently come to understand that there is a slight discrepancy between the wording of the Code provision, as drafted by the House of Delegates of the ABA and as governed by the Supreme Court which does not change the substance of the rule.

Q. Do you know which draft arose first?

A. Well, I assume -- I don't know for

certain -- I can only assume that in the normal course of events, changes in the rules are initially proposed by the House of Delegates.

They have no effect on attorneys until and unless they are thereafter adopted by the disciplinary authority in each state. So I assume it was proposed initially by the House of Delegates, then if there is a discrepancy, it was adopted in its changed form by the Supreme Court of (11) the state

Q. You are a member of the House of Delegates now; is that correct?

A. No.

Q. You are not.

What is the system of representation of the State Bar in the American Bar Association?

A. For the most part, it is based upon the number of lawyers in the state who are members of the American Bar Association. I think that for each 1,000 members, you are

-- I'm not exactly sure of the number for qualification, but I think that's the basic formula. You have to have a certain number of members in the ABA in the state to qualify for a delegate.

In addition to that, you are entitled -- I can tell you who our representatives are. We have what is called a state bar delegate. We have a state delegate who is elected by ballot among all of the ABA members of the state; the state bar delegate being appointed by the Board of Governors, then there is a delegate representing the Arizona Bar Association.

Q. As far as you know, the State Bar of Arizona has always been represented in the American Bar Association since its inception; since you have been familiar with it?

A. Since I have been familiar with it, yes.

(12) And that's since you came to

enter practice in Arizona?

A. Yes.

Q. Do you have any knowledge whether the State Bar of Arizona or the Maricopa County Bar Association ever had a suggested schedule of minimum fees?

A. I know that the Maricopa County Bar Association had such a schedule.

To my knowledge, the State Bar has never had such a schedule.

Q. Does the Maricopa County Bar Association presently have such a schedule?

A. No.

Q. Do you know approximately when it was abandoned or rescinded?

A. Within the past two or three years.

Q. The State Bar has an Ethics Committee; is that correct?

A. Yes.

Q. What's the role of the Ethics Committee?

A. In general terms, the Ethics Com-

mittee receives inquiries from members of the Bar as to whether certain hypothetical prospective conduct, if carried out, would be in violation of the Code of Professional Responsibility. The committee receives such inquiries and distributes or (13) promulgates opinions concerning the hypothetical prospective conduct.

Q. And that body is not itself a disciplinary body, in terms of initiating or hearing disciplinary cases; is that correct?

A. Yes.

Q. What force and effect, if any, do its opinions have in disciplinary proceedings?

A. I think they are generally regarded as advisory.

Q. The enforcement, then, of the Canons of Ethics, which preceded the Code of Professional Responsibility, and the Code of Professional Responsibility lies, in the first instance, with the Adminis-

trative Committee; is that correct?

A. Yes.

Q. The Administrative Committee, to which the Respondents' case has been referred has as its chairman, Phil von Ammon, and as its members, Ivan Robinette and Carl Divelbiss. Do you know these gentlemen?

A. Yes.

Q. Are they in private practice in the City of Phoenix?

A. Yes.

Q. To your knowledge, has the Supreme Court itself, on its own motion, initiated disciplinary proceedings (14) without going through -- in other words, you described the normal method as someone calling it to the attention of the Board of Governors. Has the court, without going through the State Bar machinery, ever disciplined an attorney for an ethical violation?

A. Before I answer that question, let

me correct what I think may be a misconception. The normal method is not having someone referred to the Board of Governors. The normal method is by having someone referred to the staff people in the State Bar office, who under the present rules then review, then therein refer to a Local Administrative Committee for investigation.

The rule also permits either the Court or the Board of Governors or a Local Administrative Committee to initiate complaints on their motion.

In the case you inquired about, in the earlier part of the deposition, that case was initiated on motion to the Board of Governors.

Q. Which case are you referring to?

A. The case in which you are involved.

Q. The case involving the Respondents?

A. The case of Bates and O'Steen.

Now, as far as the question you originally addressed to me about the court, I

feel confident, on certain rare occasions.

(15) Q. The question was, if you will excuse me, was: Whether you knew of any instance where the court had?

A. I only have a vague recollection of one instance that comes to mind, and it arose in the context of a litigated case came to the court, in which the court then, in its opinion, suggested that the matter be pursued by a Local Administrative Committee.

Q. By a Local Administrative Committee?

A. I don't know whether they actually used that term, but they made some reference in the opinion which raised the question as to whether the Bar should take action.

I'm kind of vague about that, really.

Q. Why was the schedule of minimum fees of the Maricopa County Bar Association abandoned? Do you know?

A. Not of my own personal knowledge. I wasn't on the Board at the time.

Q. You were a member of the County Bar Association?

A. Yes.

Q. Are you familiar, in a general way, with the traditional ethical position of the Bar in regard to advertising?

THE WITNESS: I'm sorry. Would you read the question?

(Question read by reporter.)

(16) A. I think so.

Q. What is their tradition regarding general public advertising?

A. I think the rationale underlying the so-called traditional position --

Q. Just, first, what is the traditional position?

A. It's opposed to advertising?

Q. Now, why?

A. Well, I think the principal reason for the opposition is that advertising implies solicitation, and solicitation is contrary to the normal way in which profes-

sional people, as opposed to business people secure clients, as opposed to customers.

Q. And the reason for this, then, is that the professions themselves traditionally do not solicit?

A. I think that's true.

Q. Do you wish to offer any other reasons for the tradition than the fact that it has always been that way with the professions?

A. I think that I can offer a few. At least, I can elaborate a little bit about it.

I think, historically, most people believe that the, quote: "learned professions", unquote, had an obligation or tradition of public service, and depended for their livelihood on their qualifications; on their (17) record of public service, and their ability to do high-quality work, and that these characteristics were what developed or enabled the professional to

develop a clientele or a following, and that advertising is inconsistent with those characteristics as the qualities which attract a clientele.

Advertising would enable a professional to attract a clientele without regard to his qualifications; without regard to his sense of professional responsibility, and in a general way would commercialize and change the whole focus from one who has certain strong ties with professional traditions to one who simply is marketing widgets or any other commercial (sic) commodity.

Q. And it's your feeling, then, that advertising would draw in clients just by reason of the advertisement; is that correct?

A. I don't know whether it would or it wouldn't, but I think that's obviously the rationale which those who want to advertise rely on. I think people who

want to advertise believe that advertising would attract people.

Q. And it has to attract people for it to be any danger to the people; doesn't it, the danger that you just described, that people would come in, not being attracted by the particular qualifications of the attorney.

(18) That danger is only realized if the advertising does, in fact, attract clients; is that correct?

MR. FRANK: Objection.

A. In part. In part. I mean, if people are attracted to people who aren't qualified that render service, that certainly is part of the danger for those who are attracted.

Q. BY MR. CANBY: What means now is there for a person who lives here in Phoenix, let's say, and decides he wants a lawyer, to find one?

A. Well, I suppose there are several.

He can contact the County Bar Association, which has operated a Lawyer Referral Service for many, many years, and will be advised that there are two plans within the Referral Service: Those for people who are able to afford a lawyer at whatever the competitive rate is, and those people who are of limited means. There is a panel of lawyers within the Referral Service program who have agreed to serve people of limited means.

There is a Legal Aid Society, which is available, and which is listed in the phone book.

There are all of the historic bases for referral that any professional has, a banker, a grocer, a tradesman; anybody who the average citizen might have contact with who might have had contact with a lawyer, as (19) a potential advisor, as to whether is a lawyer around to serve the potential client's needs.

Q. Let's take the Lawyer Referral Service. What happens when a person calls the Lawyer Referral Service at the County Bar? What is the next step, assuming it's someone who does not qualify for legal aid? In other words, someone who doesn't fall into the poverty category.

A. I believe the staff person makes an inquiry about the nature of the prospective client's problem. The staff person has a list of all of the lawyers who have agreed to participate in the Referral Service, with an indication to what areas of the law those lawyers are interested in serving clients.

The staff person then makes an appointment for the prospective client with a lawyer on the list. The purpose of that appointment is an initial consultation, which is then arranged.

The client sees the lawyer. If the lawyer feels that the client has a prob-

lem which the lawyer can help solve, they make whatever arrangements they are going to make, and that's how the relationship is established.

That's my understanding.

Q. Would you agree that not all lawyers are equally competent?

A. Yes.

(20) Q. And that not all lawyers charge the same fee for the same service?

A. Yes.

Q. When the person is referred by the Lawyer Referral Service to a particular attorney, what way does he have of judging either the competence of that attorney, compared to others who might have been available, or the fees of that attorney, compared to the fees of others who would have been available?

Is he told anything in that regard?

A. By the staff person?

Q. Yes.

A. I don't know.

Q. Is the staff person authorized to decide which attorneys are the most competent on the Lawyer Referral List?

A. I doubt the staff person has any way of knowing that.

Q. The staff person is not a lawyer; is that probable; or do you know?

A. That's probable.

Q. Do you feel that non-lawyers are in a difficult position to evaluate the competence of lawyers?

A. I think the question is too broad. I think some laymen are probably well-qualified to judge the competence (21) of lawyers, and some laymen are not.

Q. Are you familiar with the operation of any prepaid legal services schemes existing in Arizona?

A. Generally, yes.

Q. Is the client able to obtain legal services there for a fixed cost to the

client?

A. Well --

Q. Maybe you can elaborate and describe it.

A. To my knowledge, there are several prepaid legal services plans. There is one Bar-sponsored prepaid legal services plan commonly referred to as an Open Panel Plan. There are several Closed Panel Plans.

With regard to the Bar-sponsored Open Panel Plan, the client can obtain the services which are included in the schedule of services at a predetermined fee.

Q. That schedule of services lists various kinds of services, not necessarily by any means all, but certain kinds of services for which a certain fee will be charged; is that right?

A. That is correct.

Q. And that's made known to the potential client in advance; is that correct?

A. Yes. I think the document which

describes the plan is probably the best evidence of the plan, and I may not be entirely accurate in my statement, but if you (22) wanted to be certain you could simply secure it.

MR. FRANK: I have interposed no objection, because Mr. Canby and I have agreed that we are going to essentially allow each other that he can put in whatever evidence he wishes, but I would stipulate that if he wants to add to your deposition the documents he referred to, there will be no objection to him.

MR. CANBY: All right, I have no further questions.

EXAMINATION

BY MR. FRANK:

Q. Mr. Harrison, you made some references to recommended minimum fee schedules of the County Bar, which have been abandoned in recent years. Do you recall that part of your interrogation?

A. Yes.

Q. So far as you know, have there ever been any mandatory fee schedules of the County Bar?

A. To my knowledge, there has never been a mandatory fee schedule.

Q. As far as you know, have there been any disciplinary proceedings in the past, involving the question of the price of which someone puts on legal services?

A. It is my understanding that there has never been (23) a disciplinary action taken because of a fee charged by a lawyer in the State of Arizona.

Q. You have been referring to the County Bar, which maintained that schedule. Is the County Bar a part of the State Bar, or is it a separate organization?

A. Wholly separate. It's a voluntary Bar association.

Q. Your State Bar, as you have described it, is mandatory, and the County is

wholly voluntary?

A. Yes.

Q. And there is no automatic membership of one in the other?

A. Correct.

Q. Mr. Harrison, you referred to solicitation, and alluded to advertising as a portion of solicitation, I believe. Is that correct?

A. Yes.

Q. Speaking broadly, what is solicitation, as lawyers speak of it in connection with legal ethical concessions?

A. As I understand it, it's the overt, unrestrained public effort to acquire clientele.

Q. You said "overt, unrestrained". Is the "unrestrained" a necessary portion of that definition?

A. Not really.

(24) Q. What is the Bar's view on solicitation?

A. It is quite opposed to solicitation.

Q. If the Bar opposes solicitation, and if, in fact, solicitation is not carried on -- and I take it it is not in this community, generally speaking; is that right?

A. Generally speaking, it is not. I'm sure there are abuses.

Q. But, in that case, how do law offices generally grow and develop in the community.

A. I think that law offices generally grow and develop on the basis of their performance; on the basis of the circle of acquaintances, friends; business associations developed by lawyers in the normal course of their dealing in the community; by their public service activities; by their social activities.

I think that's the way most firms grow and develop.

Q. Do, in fact, law offices in the State of Arizona grow and develop?

A. Yes.

Q. Are you generally acquainted with the lawyers of all ages throughout the state?

A. I think fairly well so.

Q. In this connection, have you formed an opinion as to whether lawyers, generally speaking, who seem to you to (25) be of any real competence, in fact, are successfully developing practices within a few years of their entry into the profession here?

A. It's my impression that any lawyer of average or better than average competence, who is willing to make an effort, is developing a sustaining, successful practice.

Q. How many lawyers are there in the State of Arizona?

A. The active membership at the present time is just under 4,000. The total membership is about 4,650 members.

Q. Do you happen to know what the growth figures are in recent years?

Is there any comparison that you are able to make?

A. Well, I think since I arrived here in 1960, the Bar has more than doubled.

Q. I believe you have just told us that this 4,000 or so persons are, in fact, engaged in the practice of law, with reasonable success, if they are of any competence, without having used devices of solicitation or advertising; is that correct?

A. That's my impression.

Q. Well, now, is there, in fact, an unmet need in the community for legal services, on the part of the public?

(26) A. I think there is.

Q. What is that unmet need?

Would you describe it?

A. I think there are probably a fair number of people who have legal problems who are not having them attended to.

Q. What has your administration done, if anything, while you have been in the

leadership of the State Bar to deal with that problem?

A. We are in the process of implementing the Group Prepaid Legal Service Plan, which I was asked about on cross-examination. We have attempted to promote the concept of public interest law.

There is a committee right now which is exploring the ways in which the legal clinic concept can be properly developed.

I think those are the areas in which the State Bar has functioned primarily to meet the unmet needs of potential clients.

Q. You also mentioned earlier there is also a Legal Aid program in the state. Is that a program to be encouraged by the County Bar?

A. Yes, the Legal Aid and prepaid plan services are primarily sponsored by the County Bar Association.

Q. You were asked questions earlier about the Bar's (27) view on advertising.

What, in your opinion, is the evil of advertising of professional services, in this profession?

A. Well, there's already been a fair amount of discussion about solicitation as an evil generated by advertising. I think the advertising of legal services can be inherently misleading to an uninformed potential client.

Q. How is that so?

How is advertising likely to be misleading in this field -- correction -- I want to put this question with great care, because I suspect this part of the record will be used elsewhere.

You said advertising can be misleading; that is, advertising of legal services.

Do you regard it as likely to be misleading?

A. Yes, I do.

Q. Why?

A. Well, while I am certain that

there are certain tasks undertaken by lawyers which turn out to be essentially repetitive, it is difficult, if not impossible in advance to know whether a prospective client's problem is going to be like the last client's problem. I think if you advertise your ability to serve a prospective clientele by the rendition of services to solve certain kind of (28) categorical problems for a certain price, the advertisement in and of itself assumes that the problems are going to be the same, and that you will be able to render a quality service at a predetermined price.

Now, all I can say is that that assumption is contrary to my experience, because while as I say there are obviously cases which bear striking similarities, and services which bear certain similarities, that's something you can't know in advance, and each case -- almost every case presents distinct and major wrinkles -- they may be

major or minor wrinkles -- and to the extent they may be major wrinkles, they may affect whatever you may charge to the client.

Q. Let me ask, have you done any services in the field of domestic relations?

A. Yes, I have.

Q. Can someone advertise consent divorces, so and so much, without misleading anyone?

A. I think it's thwart with problems.

Q. Why?

A. I suppose you can get lucky and have three clients come in in response to such an ad who have no children; no real property; no real disagreement, and you can handle such an uncontested divorce, and do a proper job for a predetermined, (sic) prestated price.

(29) On the other hand, I think the odds are just as great that the prospective client comes in, and even though there is no real disagreement with the prospective

client, suppose you find that the prospective client was married before; that there are children of two marriages, and that there is real property in three jurisdictions, and even though there is no disagreement on how this property and custody should be dealt with, this requires greater effort to solve properly and competently.

I don't think the lawyer who says, I will do this for the predetermined price, is going to be able to deliver the same quality service, and if he is trying to do this, and competently handle all of the unforeseen special problems attendant to that particular client's situation.

In short, what I'm saying is that it seems to me that the inherent vices that you can't know in advance, what special problems the client who sees the advertisement will present, and if you are bound to a predetermined price, it seems to me that sooner or later you are going to have

to inevitably sacrifice the quality of service you are able to render.

Q. Can't you, instead, snake them in your announced price, then put in some add-ons, like the auto dealers?

A. That's obviously the logical consequence, and (30) what probably might make it inherently difficult. Either the client is mislead, (sic) that he is going to get a quality service and ultimately doesn't get that because of the lawyer's inability to deliver it, or he gets in and thinks it was an uncontested divorce, and finds there are problems, which in the lawyer's definition of an uncontested divorce. Then he is going to charge more.

It's like the telephone company. It's going to sell you a telephone; it's the Princess phone, and by the time you are through it's three or four different things.

I think those add-ons are what

the average lawyer deals with after he hears all of the facts, and then he can quote a fee that's going to fit for the particular problem he is going to handle, to deal with those situations.

Q. Do you believe that legal advertising would serve the public interest?

A. I certainly don't believe at this point in time that price advertising would serve the public interest.

Q. Do you think it would disserve the public interest?

A. I think it would.

Q. Why? Anything to add to what you have already said?

A. Only kind of a generalized observation. I think (31) that to the extent that if we assume hypothetically that price advertising is going to generate a lot of business for those offices which engage in it, to the

extent that my assumptions are correct, mainly, that the laweyr who engages in set price advertising is unable to deliver a quality service, or has to revise the prestated price because of facts presented by the client's particular problem. Either of these things, it seems to me, are going to lead to further disenchantment on the part of the public, and further disillusionment with lawyers in general.

Now, that's the disservice to the public from the public's point of view. There is a whole other dimension from the Bar's point of view, which also has some impact on the public.

Q. What is that?

A. One of my deep concerns about this problem relates to the ability of the Bar to deal with whatever deception arises, intentional or otherwise, in the area of advertising.

Q. Let me take you into that subject, please. How does the Bar handle disciplinary matters?

You opened that topic a little with Mr. Canby. Would you enlarge on it now, and describe it?

A. Well, the routine complaint is brought to the (32) attention of the staff people in the Bar offices, by a disgruntled client; by a lawyer or a judge; by the Board of Governors, upon reading of something in the newspaper or hearing in some other way, by the Local Administrative Committee.

It is then, in almost every case referred to the Local Administrative Committee for attention. The Local Administrative Committee appoints someone who is called Bar counsel, to actually handle the investigation and serve as counsel for the Bar in the proceedings. The function to is com-

parable to that of a state attorney, or whatever.

The Bar counsel investigates; reports to the Local Administrative Committee, and, in effect, the Committee then makes a determination as to whether or not there is probable cause to believe that a violation of the Code of Professional Responsibility has been committed. If the Committee makes such a determination, then the Committee directs Bar counsel to prepare what is called a Formal Complaint, a written document which is then served upon the Respondent's attorney, and at that point in time all of the procedural safeguards, rights to due process and so forth are invokable by the Respondent's attorney.

The hearing is held. The Respondent is entitled to cross-examine witnesses; present evidence; have (33) transcript of the proceedings; confront

-- in cases where the charge is based upon someone's allegation, confront his accuser, and so forth.

The Committee then considers the evidence and makes a determination as to whether or not the charges alleged in the Formal Complaint have been established. If they so find, they then make Findings and a Recommendation of Discipline to the Board of Governors.

If they find that it has not been sustained, they recommend dismissal.

In either event, the matter can be considered by the Board of Governors. The Board of Governors, at that level -- the Respondent and his counsel and Bar counsel appear before the Board of Governors. It's not really a de novo proceedings, because at that level the Board is going on the record established at the Local Administrative Committee, but the Board will hear any-

thing that the Respondent cares to say at that point, either in litigation or in other way bearing upon the record established at the Local Administrative Committee.

The Board can then simply affirm the Findings and Recommendations of the Local Administrative Committee; modify them; reverse with directions or further investigation, or whatever.

If the Board of Governors affirms it, then it (34) makes a Recommendations and Findings to the Supreme Court, and at that level the Respondent and his counsel have opportunity to object to the Findings; appear before the court and make argument, and so forth.

The court, of course, is the final repository of discipline authority in the state.

Q. And the court is the only one which can actually impose a discipline;

is that correct?

A. That's correct.

Q. Now, the activities which you are describing only rarely happen in matters of advertising, I assume. Is that correct?

A. Very rarely.

Q. As a matter of fact, this episode is the first case of outright advertising you have ever seen?

A. That is true.

Q. Let's go to what those other cases are. A number of those cases involve, I believe, outright charges of crime, fraud or very serious injury to persons; isn't that so?

A. True.

Q. Stealing their money?

A. True.

Q. Or in otherwise taking advantage of them, which may overlap with actual criminal offenses?

(35) A. True.

Q. Now, quantitatively, how many of the cases are there, all told?

A. Well --

Q. I asked you to be prepared on this, and you probably have some facts but to facilitate the matter, will you tell, if you have them, what the volume of these matters is, and what the time factors are that go into their handling?

A. I'll do my best.

In 1975, there were 330 Complaints docketed. As of January 6, 1976, 215 were still pending.

There are 40 Local Administrative Committees in the state, plus four special committees assigned for one Complaint only.

A review of the reports show that hearings on approximately 30 matters were held during 1975, and that an additional five matters were resolved

by stipulation. This means that that's the approximate number of matters which went to the Supreme Court, although, there were some additional matters sent early in 1976. A fair percentage was dismissed after investigation.

I should have added in explaining the disciplinary process, that all of the members of the Local Administrative Committee are lawyers who are volunteering (36) their time.

Q. On that score, the whole thing is voluntary; isn't it?

A. Right.

Q. The Board of Governors is uncompensated?

A. That is true.

Q. And the local operations is an operation carried on by busy people; is that right?

A. With minor exceptions. After January 1, 1975, we added a full-time

staff Bar counsel, whose primary responsibility is to oversee the disciplinary process, and to make sure the volunteers are doing their job. He also has actively served as Bar counsel in a limited number of matters. I think seven or eight matters last year.

We have an investigator on the staff, who investigates a limited number of Complaints which are filed.

Of course, there are some secretarial and clerical personnel in the Bar office, whose sole responsibility is in the disciplinary area, but beyond those exceptions the entire process is voluntary.

Q. Mr. Harrison, how long does it take to move these cases, generally speaking?

A. The best answer I can give you, I looked at what we call the Disciplinary Coordinator's Report, and it was (37)

produced in February, and although the report itself is confidential, on February 2, 1976, there were Complaints pending for six months or longer, 87.

Q. Is it true, Mr. Harrison, that a fairly sluggish nature of the whole process is a matter of great concern to the Bar and the public?

A. It is. I think, as far as I'm concerned, that is the most serious facing the Bar. One of the most serious.

Q. Now, this is in real part, I assume, a factor of the work volume that has to be handled; is that right or wrong?

A. That's right.

Q. Now, we come to the matter of advertising. Let us suppose that the Bar undertakes, by the use of these procedures, to review widespread advertisements in the newspapers as to whether they are misleading or not. Can we handle that, under the existing system

and with the existing machinery, at all?

A. I think not.

Q. Is the practice effectively to be that we will, in truth, have no control whatsoever?

A. I think, quite frankly, the system is -- I won't say on the verge of breaking down right now, but it is certainly strained beyond its reasonable capacity, and if (38) we try to superimpose on the existing system either a review by the bar in some way of advertising, or a response by the Bar to the unrealized expectations of those clients who relied on advertising to advertising, the system as it is presently constituted couldn't handle it.

Q. Isn't it true that the greatest single deception that could arise in the whole business would be to hold out to the public whether, in fact, we had

any control over whether an ad was misleading or not?

A. That would certainly be one of the greater deceptions.

Q. Mr. Harrison, I'd like to go to one of the other subjects, and that is concept of the profession as a public calling to which you made a reference, and here I'll narrow it down to this office and you, and the people you know best, your own partners.

What does this office, in fact, do either to improve the corpus of law or to improve the profession, as you envision either of those things?

A. Well, in terms of improving the corpus of the law, as you put it, all of my partners and I have served on various sections and committees which deal with substantive -- which deal with improvement in the substantive areas of the law.

(39) My partner, Buzz Singer, has been chairman of the taxation section; my partner Bob Myers was for many years the chairman of the uniform juries. I have been for many years on the Appellate Rules Committee. We encourage our associates to get involved in that sort of thing.

Q. Are those substantially time-consuming?

A. Quite.

Q. How about the matter of the profession itself? Take, for example, your work earlier as County Bar President -- if that's the proper title for the county -- and now State Bar President, what fraction of your time do you give to these activities?

A. Well, there's no comparison between the two, but this year I would say I am spending about two-thirds to three-quarters of my normal time on

Bar-related matters.

Q. So that, in fact, as a matter of income, you are sustained by the efforts of your partners of this year? It's become a leave of absence, as a practical fact?

A. I hope I'm sustained by my partners.

Q. Now, let me go to the matter of free work or discounted work, which may be undertaken by this office, not as a matter of simply the accident of somebody not paying, but by design and policy. What do you do?

A. Well, for two years I served as uncompensated (40) counsel for the state Democratic party. I have been cooperating counsel for the ACLU for many years, and although I haven't handled any cases for the last two years, because of my increasing activities with the Bar, I have handled

cases for the ACLU.

This office undertook to serve as counsel for the Metropolitan Resource Business Center, which is an ongoing institution in Phoenix designed to help low-income people who are starting in businesses, and that center developed a panel of lawyers and accountants who serve without fees and counsel those prospective businesses in the development of their business enterprises. We have done that for a couple of years.

We have devoted a fair amount of time to the work of public interest law firm. Although we haven't actually undertaken any litigation in the public interest law firm, we have, as a matter of fact, put in a lot of its activities.

Q. And done a good deal of fund raising for it, as a matter of fact?

A. Yes.

Q. Do you regard advertising as compatible with the professional

traditions and ideals of lawyers?

A. I certainly don't regard price advertising or advertising in any generalized sense as compatible with (41) the concept of a profession.

Q. Well, you have from time to time referred to price advertising, which obviously implies you have in mind something else. To shortcut, I'll go to it, since we have talked about it.

You do believe that listing of specialization is proper; is that correct?

A. I am -- as you know, my thinking about this is somewhat in a state of flux, but I have less concern about the dissemination in some restrained way of data bearing upon the lawyers' qualifications than I do about price advertising, about which I have already commented at length.

Q. You are seeking to sponsor a specialization program in the state, I believe?

A. It is in the process of implementation right now. The court has adopted a rule, and the Board of Specialization is going to be appointed, and that in itself will facilitate certain forms of limited information.

Q. And this, in your opinion, it would be proper and not a disservice to the public to permit lawyers to be known, for example, in the Yellow Pages classified by specialization, which would be recognized by the Bar; is that correct?

(42) A. True.

Q. And that is the kind of in-creasive (sic) advertising which you had meant to suggest would be a tolerable or even constructive, in your point of view?

A. Correct.

Q. Putting that aside now, that rather limited exception, if you regard advertising as incompatible with professional traditions and ideals, as I think you have just stated; why?

A. Well, we return to the point Mr. Canby asked me about early in cross-examination. I suppose this bears on each lawyer's own orientation. My father has been a member of the Bar for 54 years. He started his practice in Pittsburgh in 1922; had no immediate source of business; worked hard and developed what I regard as a very thriving practice, with all kinds of people with limited means, and never placed an ad in the newspaper and was, I think, busy, and served because of his reputation among the people he did serve.

When I came here, I didn't know a soul. Somehow, I think that -- we either have to make a choice, either we are going

to -- I don't think that treating the rendition of highly personal services and very personal situations can be dealt with in the same way that GEMCO sells toys to my kids and advertises specials on commodities.

(43) It may be, you know -- my views about this may prove to be incorrect, and the disciplinary authority in this state may overrule my views, but if they do, I don't think the profession will be able to continue to serve the people as it has for a good many years. I think that it will inevitably be rendering a kind of mass-produced, less personalized and less valuable kind of service.

I can draw some analogies from the medical profession, and the analogy isn't prompted by advertising on their part, but we see growing disenchantment of the medical profession, because of the increasing impersonal nature of the relationship between doctor and patient. The doctor

is somebody who the patient sees, because he was referred by another doctor. He doesn't have any kind of a one-to-one relationship with the patient; he's just a body of being dealt with by the doctor.

It seems to me that if the legal profession ends up treating clients essentially as nonentities that we won't be professionals. We can't adhere to the same tradition of integrity. You don't have the same sense of identity with your client. You can't possibly advocate your client, because with so much conviction -- I heard an explanation of how a legal clinic works. I think the legal clinic has a role in our society. One of the things that I haven't sorted out in my mind that I am concerned (44) about is that spector (sic) of about 30 prospective divorce clients in a waiting room with a lawyer giving them all a set speech before they go to court to get their default divorce. You know, I find that difficult to equate

with the notion of a professional person who is trying to deal exhaustively for his client's cause. I think it's difficult to understand one client's problem and deal with it responsibly on a given day, and then trying to deal with 30 and adhere to those traditions seems to me to be an impossible objective.

MR. FRANK: I have nothing further.

EXAMINATION

BY MR. CANBY:

Q. Does the Bar now monitor the practice of lawyers, or does it wait for a Complaint concerning incompetence or those serious injuries that were listed, cases, like the ones you listed, your summary?

A. Well, basically, it waits for Complaints, except in those instances where the problem is a matter of public record. Those Complaints which are typically initiated by the Board of Governors are matters which come to our attention, because

of their references in the newspaper.

Q. You don't have a regular monitoring system for competence or anything?

(45) A. No, no.

Q. You said that you undertake a certain amount of free work. Do you ever quote a client a fee, and then discover that the case is really going to take a good deal more work than you had anticipated?

Has this ever happened to you?

A. Not since my first year in law practice.

Q. Well, when that happened in your first year in law practice, what did you do?

A. I took a loss.

Q. In other words, you did the work in a competent fashion, even though you were exceeding what you could charge?

A. Yes. If the client -- I can't recall specific cases -- but if the client

was not in a position to pay an increased fee, when I had discovered that I had underestimated the size and complexity of the project, and, of course, I attempted to complete it with as much competence as I quoted correctly. But the reason it hasn't happened since the first year, I recognize that I couldn't continue to exist by having taken excess losses and still competent work.

Q. You can't take a loss on every case?

A. Even on a substantial number of cases.

Q. You did testify you do a certain amount of free (46) work, or your firm does, and so on?

A. Correct.

Q. A true professional, then, may be able to do work even though it's not necessarily related to the price that that particular individual case involves for him?

A. A true professional can do high-

quality work for nothing, as long as he is controlling the quantity of such work.

Q. Right. Do you know whether it is the practice in this state at all for lawyers to quote prices, perhaps even when a client calls and inquires by telephone as to certain kinds of services?

A. Bill, I'm sure that some lawyers do that. I will not quote a fee over the telephone. In fact, I wouldn't even quote, since my first year or second year, a set fee. I will try -- well, I'm not answering your question.

I think that some lawyers probably do quote fees.

Q. All these problems that you mentioned in the Bar, of course, exist now apart from advertising. You had no advertising cases in that list of problems that were taken?

A. No clear-cut cases, that's right.

Q. You mentioned that you can advertise

-- perhaps you might take the position you can advertise specialities perhaps in the Yellow Pages or something. You can also (47) advertise in reputable law lists; can't you?

A. True.

Q. Who uses these law lists?

Where do they go?

What is the readership of these?

A. Primarily, lawyers. They are in a good many public libraries; a number of banks; other large institutions have them, but primarily they are used by lawyers.

Q. Is there any charge or fee involved with the Bar Association?

Is the ABA, to your knowledge, on any of these law lists?

A. It's my understanding that in order to be approved as a reputable law list, you have to submit evidence that you meet certain criteria which has been established by the ABA Standing Committee on Law Lists, and pay

a fee.

I don't know exactly what the criteria are and I don't know what the fee is, but I think that's essentially true.

Q. If an attorney advertises a service at a given price, and he performs the service at that given price competently, he is not being false or misleading to his client, is he?

(48) A. No.

Q. The theory of the prepaid legal service plans, where we have a schedule of benefits, must suppose that occasional cases are going to exceed what the client will pay and most others will not; is that correct?

THE WITNESS: Would you read the question back?

(Question read by reporter.)

A. I think that's probably a fair statement.

I'm trying to recall, Bill -- I have

the feeling there may be certain escape valves, if you will, in the prepaid legal service plan, but I just don't know what they are right now. That's why I referred you to the document, when you were touching on this earlier.

Q. All right. Consequently, if there is a fixed schedule of fees, there is some spreading of price between the cases for the occasional case that will still be listed as a described benefit, but will turn out to be a little more complicated than most; right?

A. If your supposition is correct, I would say that's true.

* * * *

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BAR EXHIBIT NO. 7

RESTATEMENT OF THE CODE OF
PROFESSIONAL ETHICS
CONCEPTS OF PROFESSIONAL
ETHICS RULES OF CONDUCT
INTERPRETATIONS OF RULES
OF CONDUCT

BY: AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS

The Rules of Conduct contained in this booklet will, upon adoption become effective on March 1, 1973.

* * * *

(1)

INTRODUCTION

* * * *

This document consists of three parts. The first part, the Concepts of Professional Ethics, is a philosophical essay approved by the Division of Professional Ethics. It is not intended to establish enforceable standards since it suggests behavior beyond what is called for in the Rules of Conduct.

The second part, the Rules of Conduct, consists of enforceable ethical stan-

dards and requires the approval of the membership before the Rules would become effective. It is printed on colored pages to facilitate identification.

The third part, Interpretations of Rules of Conduct, consists of interpretations which have been adopted by the Division of Professional Ethics to take the place of the present Opinions of the Ethics Division upon adoption of the restated Rules of Conduct.

* * * *

(5)

CONCEPTS OF PROFESSIONAL ETHICS

* * * *

(14)

OTHER RESPONSIBILITIES AND PRACTICES

A certified public accountant should conduct himself in a manner which will enhance the stature of the profession and its ability to serve the public.

* * * *

Solicitation to obtain clients is prohibited under the Rules of Conduct because it tends to lessen the professional independence toward clients which is essential to the best interest of the public. It may also induce an unhealthy rivalry within the profession and thus lessen the cooperation among members which is essential to advancing the state of the art of accounting and providing maximum service to the public.

Advertising, which is a form of solicitation, is also prohibited because it could encourage representations which might mislead the public and thereby reduce or destroy the profession's usefulness to society. However, a CPA should seek to establish a reputation for competence and character, and there are many acceptable (15) means by which this can be done. For example, he may make himself known by public service, by civic and political activi-

ties, and by joining associations and clubs. It is desirable for him to share his knowledge with interested groups by accepting requests to make speeches and write articles. Whatever publicity occurs as a natural by-product of such activities is entirely proper. It would be wrong, however, for the CPA to initiate or embellish publicity.

Promotional practices, such as solicitation and advertising, tend to indicate a dominant interest in profit. In his work, the CPA should be motivated more by desire for excellence in performance than for material reward. This does not mean that he need be indifferent about compensation. Indeed, a professional man who cannot maintain a respectable standard of living is unlikely to inspire confidence or to enjoy sufficient peace of mind to do his best work.

In determining fees, a CPA may assess the degree of responsibility assumed by

undertaking an engagement as well as the time, manpower and skills required to perform the service in conformity with the standards of the profession. He may also take into account the value of the service to the client, the customary charges of professional colleagues and other considerations. No single factor is necessarily controlling.

Clients have a right to know in advance what rates will be charged and approximately how much an engagement will cost. However, when professional judgments are involved, it is usually not possible to set a fair charge until an engagement has been completed. For this reason CPA's should state their fees for proposed engagements in the form of estimates which may be subject to change as the work progresses.

Other practices prohibited by the Rules of Conduct include using any firm designation or description which might be mislead-

ing, or practicing as a professional corporation or association which fails to comply with provisions established by Council to protect the public interest.

* * * *

(18)

RULES OF CONDUCT

In the footnotes below, the references to specific rules or numbered Opinions indicate that revised sections are derived therefrom; where modifications have been made to the present rule or Opinion, it is noted. The reference to "prior rulings" indicates a position previously taken by the ethics division in response to a specific complaint or inquiry, but not previously published. The reference to "new" indicates a recommendation of the Code of Restatement Committee not found in the present Code or prior rulings of the ethics division.

* * * *

(24)

RULE 502 -- SOLICITATION AND ADVERTISING

A member shall not ⁽²⁵⁾ seek to obtain ³⁵ clients by solicitation. Advertising is ³⁶ a form of solicitation and is prohibited.

35 Rule 3.02.

36 Rule 3.01.

* * * *

(31)

INTERPRETATIONS OF RULES OF CONDUCT

* * * *

(37)

INTERPRETATIONS UNDER RULE 502 --

SOLICITATIONS AND ADVERTISING

502-1 -- Announcements. Publication in a newspaper, magazine or similar medium of an announcement or what is technically ⁵⁵ known as a "card" is prohibited. Also prohibited is the issuance of a press release regarding firm mergers, opening of

55 Rule 3.01.

new offices, change of address or admission ⁵⁶ of new partners.

Announcements of such changes may be mailed to clients and individuals with whom professional contacts are maintained, such ⁵⁷ as lawyers and bankers. Such announcements should be dignified and should not refer to ⁵⁸ fields of specialization.

502-2 -- Office premises. Listing of the firm name in lobby directories of office buildings and on entrance doors solely for the purpose of enabling interested parties to locate an office is permissible. ⁽³⁸⁾ The listing should be in ⁵⁹ good taste and modest in size.

The indication of a specialty such as

56 Opinion No. 9 (4)

57 Opinion No. 11 (1a) (qualifying phrase, "lawyers of clients", is dropped).

58 Opinion No. 11 (1b)

59 Opinion No. 11 (5a)

"income tax" in such listing constitutes⁶⁰
advertising.

502-3 -- Directories: telephone, classified and trade association. A listing in a telephone, trade association, membership or other classified directory shall not:

1. Appear in a box or other form of display, or in a type of style which differentiates it from other listings in⁶¹
the same directory.

2. Appear in more than one place in the same classified directory.

3. Appear under a heading other than "Certified Public Accountant" or "Public Accountant" where the directory is classified by type of business occupation⁶²
or service.

4. Be included in the yellow pages

60 Opinion No. 11 (5b)

61 Opinion No. 11 (2a)

62 Opinion No. 11 (2a(2))

or business section of a telephone directory unless the member maintains a bona fide office in the geographic area covered. Determination of what constitutes an "area" shall be made by referring to the positions taken by state CPA societies in the light⁶³
of local conditions.

Such listing may:

1. Include the firm name, partners' names, professional title (CPA), address⁶⁴
and telephone number.

2. Be included under both the geographical and alphabetical section where⁶⁵
the directory includes such sections.

502-4 -- Business stationery. A member's stationery should be in keeping with the dignity of the profession and not list⁶⁶
any specialty.

63 Opinion No. 11 (2b)

64 Opinion No. 11 (2a(1))

65 Opinion No. 11 (2c(2))

66 Opinion No. 11 (3a)

The stationery may include the firm name, address and telephone number, names of partners, names of deceased partners and their years of service, names of professional staff when pre-(39)ceded by a line to separate them from the partners, and cities in which other offices and cor-⁶⁷respondents or associates are located. Membership in the Institute or state CPA society or associated group of CPA firms whose name does not indicate a specialty⁶⁸ may also be shown. In the case of multi-office firms, it is suggested that the words, "offices in other principal cities" (or other appropriate wording) be used instead⁶⁹ of a full list of offices. Also, it is preferable to list only the names of partners resident in the office for which the

67 Opinion No. 11 (3b(1 and 2))

68 New

69 Opinion No. 11 (3c)

⁷⁰stationery is used.

502-5 -- Business cards. Business cards may be used by partners, sole practitioners and staff members. They should be in good taste and should be limited to the name of the person presenting the card, his firm name, address and telephone number(s), the words "Certified Public Accountant(s)," or "CPA" and such words as "partner", "manager" or "consultant" but without any⁷¹ specialty designation.

Members not in the practice of public accounting may use the title "Certified Public Accountant" or "CPA" but shall not do so when engaged in sales promotion,⁷² selling or similar activities.

502-6 -- Help wanted advertisements. A member shall not include his name in help-

70 Opinion No. 11 (3c)

71 Opinion No. 11 (4a)

72 Opinion No. 11 (4b)

wanted or situations-wanted display advertising on his own behalf or that of others in any publication. In display advertising, the use of a telephone number, address, or newspaper box number is permissible.⁷³

In classified advertisements other than display, the member's name should not appear in boldface type, capital letters or in any other manner which tends to distinguish the name from the body of the advertisement.⁷⁴

502-7 -- Firm publications. Newsletters, bulletins, house organs, recruiting brochures and other firm literature on accounting and related business subjects prepared and distributed by a firm for (40) the information of its staff and clients serve a useful purpose. The distribution of such material outside the firm must be properly controlled and should be restricted to clients and

73 Opinion No. 11 (6a)

74 Opinion No. 11 (6b)

individuals with whom professional contacts are maintained, such as lawyers and bankers.⁷⁵ Copies may also be supplied to job applicants, to students considering employment interviews,⁷⁶ to nonclients who specifically request them and to educational institutions.⁷⁷

If requests for multiple copies are received and granted, the member and his firm are responsible for any distribution by the party to whom they are issued.⁷⁸

502-8 -- Newsletters and publications prepared by others. A member shall not permit newsletters, tax booklets or similar publications to be imprinted with his firm's name if they have not been prepared by his

75 Opinion No. 9 (1) (qualifying phrase, "lawyers of clients," is dropped).

76 New.

77 Opinion No. 9 (1)

78 Opinion No. 9 (1)

79
firm.

502-9 -- Responsibility for publisher's promotional efforts. It is the responsibility of a member to see that the publisher or others who promote distribution of his writing, observe the boundaries of professional dignity and make no claims that are not truthful and in good taste. The promotion may indicate the author's background including, for example, his education, professional society affiliations and the name of his firm,⁸⁰ the title of his position⁸¹ and principal activities therein. However, a general designation referring to any specialty, such as "tax expert" or "tax consultant"⁸² may not be used.

502-10 -- Statements and information

79 Opinion No. 1

80 Opinion No. 4.

81 New.

82 Opinion No. 5.

to the public press. A member shall not directly or indirectly cultivate publicity which advertises his or his firm's professional attainments or services. He may respond factually when approached by the press for information concerning his firm, but he should not use press inquiries as a means of aggrandizing himself or his firm or of advertising professional attainments or services. When interviewed by a writer or reporter, he is charged with the knowledge that he (41) cannot control the journalistic use of any information he may give and should notify the reporter of the limitations imposed by professional⁸³ ethics.

Releases and statements made by members on subjects of public interest which may be reported by the news media, and publicity not initiated by a member such as that which

83 Restatement of Opinion No. 9 (4).

may result from public service activities, are not considered advertising. However, press releases concerning internal matters in a member's firm are prohibited.

502-11 -- Participation in educational seminars. Participation by members in programs of educational seminars, either in person or through audiovisual techniques, on matters within the field of competence of CPA's is in the public interest and is to be encouraged. Such seminars should not be used as a means of soliciting clients. Therefore, certain restraints must be observed to avoid violation of the spirit of Rule 502 which prohibits solicitation and advertising. For example, a member or his firm should not:

1. Send announcements of a seminar to nonclients or invite them to attend. However, educators may be invited to attend to further their education.

2. Sponsor, or convey the impression

that he is sponsoring, a seminar which will be attended by nonclients. However, a member or his firm may conduct educational seminars solely for clients and those serving his clients in a professional capacity, such as bankers and lawyers.

In addition, when a seminar is sponsored by others and attended by nonclients, a member or his firm should not:

1. Solicit the opportunity to appear on the program.
2. Permit the distribution of publicity relating to the member or his firm in connection with the seminar except as permitted under Interpretation 502-9.
3. Distribute firm literature which is not directly relevant to a subject being presented on the program by the member or persons connected with his firm.⁸⁴

502-12 -- Solicitation of former

clients. Offers by a member to provide services after a client relationship has been clearly termin-⁽⁴²⁾ated, either by completion of a nonrecurring engagement or by direct action of the client, constitute a violation of Rule 502 pro-⁸⁵hibiting solicitation.

502-13 -- Soliciting work from other practitioners. Rule 502 does not prohibit a member in the practice of public accounting from informing other practitioners of his availability to provide them or their clients with professional services. Because advertising comes to the attention of the public, such offers to other practitioners must be made in letter form or⁸⁶ by personal contact.

502-14 -- Fees and professional standards. The following statement is required

85 Restatement of Opinion No. 20

86 Restatement of Opinion No. 7

to be published with the Code of Professional Ethics pursuant to the Final Judgment in the court decision referred to below:

The former provision of the Code of Professional Ethics prohibiting competitive bidding, Rule 3.03, was declared null and void by the United States District Court for the District of Columbia in a consent judgment entered on July 6, 1972, in a civil antitrust suit brought by the United States against the American Institute. In consequence, no provision of the Code of Professional Ethics now prohibits the submission of price quotations for accounting services to persons seeking such services; and such submission of price quotations is not an unethical practice under any policy of the Institute. To avoid misunderstanding it is important to note that otherwise unethical conduct (e.g., advertising, solicitation, or substandard work)

is subject to disciplinary sanctions regardless of whether or not such unethical conduct is preceded by, associated with, or followed by a submission of price quotations for accounting services. Members of the institute should also be aware that neither the foregoing judgment nor any policy of the Institute affects the obligation of a certified public accountant to obey applicable laws, regulations or rules of any state or other governmental authority.⁸⁷

87 New.

* * * *

BAR EXHIBIT NO. 8

ARIZONA STATE BOARD OF ACCOUNTANCY

RULES AND REGULATIONS

* * * *

(14)

IX. RULES OF PROFESSIONAL CONDUCT

* * * *

(19)

OTHER RESPONSIBILITIES AND PRACTICES:

* * * *

(2) Solicitation and Advertising: A certified public accountant or a public accountant shall not seek to obtain clients by solicitation. Advertising is a form of solicitation and is prohibited.

(a) Announcements: Publication in a newspaper, magazine or similar medium of an announcement or what is technically known as a "card" is prohibited. Also prohibited is the issuance of a press release regarding firm mergers, opening of new offices, change of address or admission of new partners. Announcements of such changes may be mailed to clients and individuals with whom professional contacts are maintained, such as lawyers and bankers. Such announcements should be dignified and should not refer to fields of specialization.

(b) Office Premises: Listing of the

firm name in lobby directories of office buildings and on entrance doors solely for the purpose of enabling interested parties to locate an office is permissible. The listing should be in good taste and modest in size. The indication of a specialty such as "income tax" in such listing constitutes advertising.

(c) Directories: Telephone, Classified and Trade Association: A listing in a telephone, trade association, membership or other classified directory may include the firm name, partners' names, professional title (CPA or PA), address and telephone number. A listing may be included under both the geographical and alphabetical section where the directory includes such sections. In no event shall the listing:

- (20) (i) Appear in a box or other form of display, or in a type or style which differentiates it from

other listings in the same directory.

(ii) Appear in more than one place in the same classified directory.

(iii) Appear under a heading other than "certified public accountant" or "public accountant"

where the directory is classified by type of business occupation or service.

(iv) Be included in the yellow pages or business section of a telephone directory unless the certified public accountant or public accountant maintains a bona fide office in the geographic area covered by the directory.

(d) Business Stationery: A certified public accountant's or public accountant's stationery should be in keeping with the dignity of the profession and not list any specialty. The stationery may include the

firm name, address and telephone number, names of partners, names of deceased partners and their years of service, names of professional staff when preceded by a line to separate them from the partners, and cities in which other offices and correspondents or associates are located. Membership in the institute or state certified public accountant society or associated group of certified public accountant firms whose name does not indicate a specialty may also be shown.

(e) Business Cards: Business cards may be used by partners, sole practitioners, and staff members. They should be in good taste and should be limited to the name of the person presenting the card, his firm name, address and telephone number(s), the words "Certified Public Accountant(s)," "Public Accountant(s)," "CPA", "PA", and such words as "Partner," "Manager" or "Consultant" but without any specialty designa-

tion.

Certified public accountants or public accountants not in the practice of public accounting may use the title "Certified Public Accountant" or "CPA", "Public Accountant" or "PA" on business cards or otherwise but shall not do so when engaged in sales promotion, selling or similar activities.

(f) Help Wanted Advertisements: A certified public accountant or a public accountant shall not include his name in help-wanted or situations-wanted display advertising on his own behalf or that of others in any publica-(21)tion. In display advertising, the use of a telephone number, address, or newspaper box number is permissible.

In classified advertisements the name of the certified public accountant or public accountant should not appear in boldface type, capital letters or in any

other manner which tends to distinguish the name from the body of the advertisement.

(g) Firm Publications: Newsletters, bulletins, house organs, recruiting brochures and other firm literature on accounting and related business subjects prepared and distributed by a firm for the information of its staff and clients serve a useful purpose. The distribution of such material outside the firm must be properly controlled and should be restricted to clients and individuals with whom professional contacts are maintained, such as lawyers and bankers.

Copies may also be supplied to job applicants, to students considering employment interviews, to nonclients who specifically request them and to educational institutions.

If requests for multiple copies are received and granted, the certified public

accountant or public accountant and his firm are responsible for any distribution by the party to whom they are issued.

(h) Newsletters and Publications Prepared by Others: A certified public accountant or public accountant shall not permit newsletters, tax booklets or similar publications to be imprinted with his firm's name if they have not been prepared by his firm.

(i) Responsibility for Publisher's Promotional Efforts: It is the responsibility of the certified public accountant or public accountant to see that the publisher or others who promote distribution of his writing, observe the boundaries of professional dignity and make no claims that are not truthful and in good taste. The promotion may indicate the author's background, including, for example, his education, professional society affiliations and the name of his firm, the title

of his position and principal activities therein. However, a general designation referring to any specialty, such as "Tax Expert" or "Tax Consultant" may not be used.

(j) Statements and Information to the Public Press: A certified public accountant or public accountant shall not directly or indirectly cultivate publicity which advertises his or his firm's professional attainments or services. He may respond factually when approached by the press for information concerning his firm, but he should not use the press inquiries as a means of aggrandizing himself or his firm or of advertising professional attainments or services. When interviewed by a writer or reporter, he is charged with the knowledge that he cannot control the journalistic use of any information he may give and should notify the reporter of the limitations imposed by

professional ethics.

Releases and statements made by certified public accountants or public accountants on subjects of public interest which may be reported by the news media, and publicity not initiated by the certified public accountant or public accountant such as that which may result from public service activities, are not considered advertising. However, press releases concerning internal matters in a certified public accountant's or public accountant's firm are prohibited.

(k) Participation in Educational Seminars: Participation by certified public accountants or public accountants in programs of educational seminars, either in person or through audio-visual techniques, on matters within the field of competence of certified public accountants or public accountants is in the public interest and is to be encouraged. Such

seminars should not be used as a means of soliciting clients. Therefore, certain restraints must be observed to avoid violation of the spirit of Rule 9-E(2) which prohibits solicitation and advertising.

For example, a certified public accountant or public accountant should not:

(i) Send announcements of a seminar to nonclients or invite them to attend. However, educators may be invited to attend to further their education.

(ii) Sponsor, or convey the impression that he is sponsoring, a seminar which will be attended by nonclients. However, a certified public accountant or public accountant may conduct educational seminars solely for clients and those serving his clients in a professional capacity such as bankers and lawyers.

In addition, when a seminar is sponsored by others and attended by nonclients, a certified public accountant or public accountant should not:

(iii) Solicit the opportunity to appear on the program.

(iv) Permit the distribution of publicity relating to the certified public accountant or public accountant in connection with the seminar except as permitted under Rule 9-E (2) (i).

(23) (v) Distribute firm literature which is not directly relevant to a subject being presented on the program by the certified public accountant or public accountant or persons connected with his firm.

(1) Solicitation of Former Clients:

Offers by a certified public accountant or public accountant to provide services after a client relationship has been clearly ter-

minated, either by completion of a nonrecurring engagement or by direct action of the client, constitute a violation of this rule.

(m) Soliciting Work from Other Practitioners: This rule does not prohibit a certified public accountant or public accountant from informing other practitioners of the availability to provide them or their clients with professional services. Because advertising comes to the attention of the public, such offers to other practitioners must be made in letter form or by personal contact.

* * * *

BAR EXHIBIT NO. 9

ETHICAL STANDARDS OF THE

ACCOUNTING PROFESSION

BY: JOHN L. CAREY AND

WILLIAM O. DOHERTY

American Institute of Certified

Public Accountants

(47)

* * * *

SEC. 29 -- ADVERTISING

The general prohibition against advertising is accepted today without much question. To be sure, there is nothing illegal or immoral about advertising as such, but it is almost universally regarded as unprofessional.

Younger accountants are sometimes tempted to advertise or solicit, and they may suspect that the rules are a result of a conspiracy among their older colleagues to protect themselves against new competition.

Actually the rule against advertising has many sound reasons to support it. In the first place, advertising would not benefit the young practitioner. If it were generally permitted, the larger, well-established firms could afford to advertise on a scale that would throw the young practitioner wholly in the shade. Secondly,

advertising is commercial. Professional accounting service is not a tangible product to be sold like any commodity. Its value depends on the knowledge, skill and (48) honesty of the CPA. Who would be impressed with a man's own statement that he is intelligent, skillful and honest? Lastly, advertising does not pay. The accountants in the early days who tried it agreed for the most part that it did not attract clients.

Rule 3.01 of the Institute's Code of Professional Ethics forbids advertising. It reads as follows:

A member or associate shall not advertise his professional attainments or services.

Publication in a newspaper, magazine or similar medium of an announcement or what is technically known as a card is prohibited.

A listing in a directory is restricted

to the name, title, address and telephone number of the person or firm, and it shall not appear in a box, or other form of display or in a type or style which differentiates it from other listings in the same directory. Listing of the same name in more than one place in a classified directory is prohibited.

SEC. 30 -- CLASS OF SERVICE

Nothing is said in Rule 3.01 about the inclusion of descriptions on letterheads or elsewhere of classes of services rendered, such as audits, taxes, and systems. The committee on professional ethics, on the assumption that most people are aware of the usual services performed by CPA's, has interpreted Rule 3.01 to prohibit the association with a member's name of designations indicating special skills or the particular services he is prepared to render.* Previously, the American In-

* Opinion No. 11, page 20

stitute had agreed that a member should be prohibited from describing himself as a "tax consultant" or "tax expert" or from using any similar self-designation in the field of taxation.**

** Opinion No. 5, page 193.

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BAR EXHIBIT NO. 10

* * * *

AMENDED DISCIPLINARY RULE

On February 17th, 1976, the House of Delegates of the American Bar Association amended Disciplinary Rule 2-102(A) (6) to read as follows:

(New material italicized; deleted material bracketed):

TEXT OF THE AMENDED DISCIPLINARY RULE

As adopted, it amends D.R. 2-102 (A) (5) and (6), the principal amendment being of 2-102(A) (6), which enumerates listable information and which now reads (new material italicized; deleted material bracketed):

(6) A listing in a reputable law list, [or] legal directory, a directory published by a state, county or local bar association, or the classified section of telephone company directories giving brief biographical and other informative data. A law list or any directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list or any directory is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates[;], a statement that practice is limited to one or more fields of law [;], or a statement that the lawyer

or law firm specializes in a particular field of law or law practice, to the extent permitted by the authority having jurisdiction under state law over the subject and in accordance with rules prescribed by that authority; [but only if authorized under DR 2-105 (A) (4)] date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references, and, with their

consent, names of clients regularly represented[.]; whether credit cards or other credit arrangements are accepted; office and other hours of availability; a statement of legal fees for an initial consultation or the availability upon request of a written schedule of fees or an estimate of the fee to be charged for the specific services; provided, all such published data shall be disseminated only to the extent and in such format and language uniformly applicable to all lawyers, as prescribed by the authority having jurisdiction by state law over the subject.

* * * *

RESPONDENTS EXHIBIT NO. 11

[TEXT: LETTER

TO ARIZONA STATE

BOARD OF ACCOUNTANCY]

* * * *

Gentlemen:

As your legal representative we feel

it is our obligation to write concerning a matter about which the Attorney General has given you advice several times over the past years. Because of recent legal developments, the advice rendered to you by this office on this matter on previous occasions is no longer applicable.

[Prior Opinions]

We refer in particular to Rule 9-E (6), now designated as A.C.R.R. R4-1-56.E.6 of the Arizona State Board of Accountancy Rules and Regulations. This Rule prohibits competitive bidding by Certified Public Accountants on the ground that it is not in the public interest, is a form of solicitation and is unprofessional. The anticompetitive effect of the rule is clear. There is no doubt that it would violate the federal and state antitrust laws if adopted by private individuals. The only remaining issue is the effect of Rule R4-1-56.E.6 on that conclusion. On July 25, 1966, the

Attorney General rendered an opinion at your request concluding that the predecessor to Rule R4-1-56.E.6 had the effect of law since its promulgation was within the authority of the State Board of Accountancy and that the rule did not conflict with the anti-trust law of the State of Arizona. See Opinion No. 66-29L [1966 TRADE CASES ¶71,880]. On May 7, 1971, this office wrote you a letter stating that the Board's rule against competitive bidding did not violate either the federal or state antitrust laws. Basically, the letter confirmed Attorney General Opinion No. 66-29-L. Finally, on January 2, 1974, the Attorney General approved and certified this Rule which was adopted by the Arizona State Board of Accountancy on December 27, 1973.

[Court Decisions]

Because of recent legal developments,

Rule R4-1-56.E.6 is unlawful under the federal and Arizona antitrust laws, and is void and beyond the scope of the Board's authority. The two most important developments involve actions by the United States Supreme Court and the Arizona Legislature. Many years ago the United States Supreme Court held that certain types of activities were immune from the federal antitrust laws if those activities were authorized by a state pursuant to a valid exercise of its police powers.

Parker v. Brown [1940-1943 TRADE CASES ¶56,250], 317 U.S. 341 (1943). There was much confusion and debate, however, over the nature and extent of the state action that was required in order to produce immunity. On June 16, 1975, the United States Supreme Court finally dealt with this problem again and some of the confusion has been clarified. In Goldfarb v. Virginia State Bar [1975-1 TRADE CASES

¶60,355, 95 S. Ct. 2004 A.R.S. §32-703 (A) has delegated power to the Accountancy Board to adopt "rules of conduct appropriate to establish and maintain a high standard of integrity and dignity in public accounting," that statute is not sufficient to satisfy the requirements delineated by the Supreme Court in Goldfarb. Although the Virginia Legislature had empowered the Supreme Court of Virginia to regulate the conduct of the legal profession, the United States Supreme Court found no immunity from federal antitrust prosecution since there was no state statute referring specifically to fees. That situation is analogous to the one presented by A.R.S. §32-703 (A). Neither that statute nor any other provision of the statutes dealing with accountancy refer specifically to the prices charged by Certified Public Accountants; nor do they manifest a clear intention of the Arizona Legislature to abandon compe-

tition in the provision of accountancy services. Thus, Rule R4-1-56.E.6 would not provide immunity from federal antitrust prosecution and is therefore unlawful and void. Moreover, Rule R4-1-56.E.6. is also unlawful under the Arizona Antitrust Law, A.R.S. §§44-1401 et. seq. if the state action doctrine, as clarified by the United States Supreme Court in Goldfarb, is applied to resolve conflict between the Arizona Antitrust Law and Rule R4-1-56.E.6.

However, it is likely that a narrower doctrine should be used to resolve the latter conflict. The state action doctrine was developed in the context of conflicts between the federal antitrust laws and exercises of state police power. Because of the considerations of federalism it would seem appropriate to allow a certain measure of latitude to states in the exercise of their police powers absent any constitutional objection. These considera-

tions are not present in an attempt to resolve a conflict between the Arizona Antitrust Law and another act of the Arizona Legislature or regulation of a state agency. The problem there is simply a conflict between the legislative expressions of one body, and the problem is one of determining the intent of the Legislature as to which statute ought to control. Normally when a legislature wishes to create an exemption from the antitrust laws it enacts an express immunity provision as part of the antitrust law or, more commonly, as part of the particular regulatory scheme.

[New State Antitrust Law]

In the Spring of 1974, the Arizona Legislature enacted the present Antitrust Law. A.R.S. §§ 44-1401 to 44-1413. Its actions at that time are very pertinent in regard to the question of whether Rule R4-1-56.E.6 affects the application of the

Arizona Antitrust Law to the activities of accountants. In the Senate Judiciary Committee a broad general amendment was offered that would have created an exemption from the Arizona Antitrust Law because of Rule R4-1-56.E.6. That amendment was rejected. Moreover, the Senate Judiciary Committee did accept and the full Legislature enacted several provisions granting exemption from the Arizona Antitrust Law because of the regulatory power and activities of particular state agencies. See, e.g., A.R.S. §40-286. (Public service corporations holding certificates of Public Convenience and Necessity granted by the Arizona Corporation Commission.) In total five express exemptions in separate statutes and one limited express exemption in the antitrust law itself (A.R.S. §44-1404) were enacted when the current Arizona Antitrust Law was passed. None of them deals with Certified Public Accountants and their regulation by

the State Board of Accountancy. Moreover, at that time it was expressly pointed out to the Senate Judiciary Committee that it might be appropriate to include some exemptions for professions and occupations regulated under Title 32. However, the Legislature chose to include no exemptions regarding regulation under Title 32. While it is possible to find an implied repeal of an antitrust statute, they are uncommon and "strongly disfavored". See Otter Tail Power Co. v. United States [1973-1 TRADE CASES ¶74-373], 410 U.S. 366, 93 S. Ct. 1022 (1973). Moreover, in this particular case an implied repeal is not even theoretically possible since the Arizona Antitrust Law was passed subsequent to the enactment of A.R.S. §32-703(A) and the promulgation of Rule R4-1-56.E.6. Thus, in light of the legislative history regarding the recent passage of the Arizona Antitrust Law it is clear that the Arizona Legislature

did not intend that there be any exemption from the Antitrust Law because of Rule R4-1-56.E.6 or any other regulation by the State Board of Accountancy. This is thus a second reason supporting the conclusion that Rule R4-1-56.E.6 is unlawful and void.

[Absence of Immunity]

In summary, we feel that, as a result of the decision by the United States Supreme Court in the Goldfarb case and the action by the Arizona Legislature in enacting the Arizona Antitrust Law, Rule R4-1-56.E.6 would provide no immunity for private individuals from prosecution under both the federal and state antitrust laws and is therefore unlawful and void. In light of our conclusion we advise and recommend that you proceed as quickly as possible to repeal Rule R4-1-56.E.6.

Sincerely,

Bruce E. Babbitt
The Attorney General

* * * *

RESPONDENTS' EXHIBIT NO. 12

(1)

ARIZONA LEGAL SERVICES
ANSWERS ABOUT ALS
BYLAWS AND PARTICIPATING
ATTORNEY RULES

* * * *

(2)

ATTORNEY'S INFORMATION MANUAL
PREPAID LEGAL SERVICES PROGRAM

CONFIDENTIAL

* * * *

(3)

WHAT IS THE ARIZONA LEGAL SERVICES
PREPAID AND GROUP LEGAL SERVICES PLAN?

ALS Prepaid and Group Legal Services Plan is Arizona's Prepaid Legal Expense Insurance Program--an open panel, free-choice-of-attorney prepaid legal insurance program.

Arizona Legal Services, Inc. (ALS) is a non-profit corporation created, sponsored and initially funded by the Arizona

State Bar. The Board of Directors is composed, at this time, of members of the State Bar who were elected to the Board by members of the State Bar's Group and Prepaid Legal Committee. As the program develops, provision has been made in the corporate charter for lay people to serve on the Board of Directors also.

ALS Prepaid and Group Legal Services Plan is the product of three years of research and developmental work by the Arizona State Bar's Committee on Prepaid Legal Services and other interested and dedicated members of the bar. A good deal of work and research has also been contributed by Midwest Mutual, who is underwriting the program.

ALS Prepaid and Group Legal Services Plan is the legal profession's response to a pressing public need. People in the middle and lower-middle income groups--approximately 70% of our population--are not

getting lawyer's services when and to the extent they should. Sometimes this is because they cannot afford these services; sometimes because they think they cannot afford the services; sometimes because they do not even know that they have a legal problem or that a lawyer should help them.

ALS Prepaid and Group Legal Services Plan is a comprehensive program of insurance service and education to meet this need. The program is underwritten by Midwest Mutual Insurance Company, a Best's A+ rated nonassessable mutual insurance company, which has independently done substantial developmental work on legal (sic) cost insurance.

ALS Prepaid and Group Legal Services Plan will be issued to qualified groups and in the name of Midwest, policies insuring group members (and their dependents if they wish) against the costs of covered legal services. ALS will then provide the

group members a panel of "Participating Attorneys" who will furnish the covered legal services, plus related educational and administrative services.

WHAT ARE "PARTICIPATING ATTORNEYS"?

Participating Attorneys are those attorneys who agree to provide the services covered under the policies of legal costs insurance underwritten by Midwest Mutual and issued through Arizona Legal Services, Inc., and to accept payment under those policies as payment in full. Each insured will be free to select any Participating Attorney they wish. A list of Participating Attorneys will be provided to representatives of insured groups, and Arizona Legal Services, Inc. will operate a program for insureds who do not have or do not know a Participating Attorney from whom the insured is free to select the Participating Attorney of his choice.

(4)WHO CAN BE AN ARIZONA LEGAL

SERVICES, INC. PARTICIPATING ATTORNEY

*Any active member of the Arizona State Bar who meets the requirements and agrees to the terms of the ALS Participating Attorney Rules, policies and procedures can be an ALS Participating Attorney.

*The requirements to become an ALS Participating Attorney include the following:

--Agreement to the methods and rates of payment for covered services as from time to time established by ALS:

--Maintaining an office for the full or part-time private practice of law within Arizona;

--Agreement to continue as a Participating Attorney for one year from the date of enrollment;

--Agreement to provide services to ALS insureds--subject to the attorney's right to reject a client on any reasonable grounds.

*The requirements to become a Participating Attorney are contained in the ALS

Participating Attorney Rules, which accompany this information.

WHY SHOULD YOU BE A
PARTICIPATING ATTORNEY?

*Because the public needs your help.

Studies have shown that people in the middle and lower-middle income groups are not receiving lawyer's services when and to the extent they should. This is largely because of cost or fear of cost. People do not budget for unexpected legal problems. They do not obtain essential legal advice or representation before they get in trouble or before their legal problems become severe and beyond their economic capabilities. Prepaid legal services, and your participation will meet and serve their now unmet needs.

*Because the legal profession needs your help, and because the Bar must provide a better method of delivering legal services to more people. Middle and lower-

middle income people, through labor unions, consumer groups and other associations, as well as individually, are becoming increasingly aware of the necessity for better delivery of legal services. They are becoming increasingly concerned about this problem and are requesting--in many cases now demanding--that the legal profession take the lead in providing a solution. There is increasing evidence that prepaid legal services in some form, or possibly other solutions which do not involve lawyers at all, are inevitable. It is in the best interest of both the public and the legal profession, it is imperative, that the profession take the lead in making certain that essential legal services are readily available to all the public, in accordance with basic ethical precepts.

*Because ALS needs your help. If ALS is to succeed as Arizona's open panel, free-choice-of-attorney program it is essential

that a very substantial majority of our private practitioners become Participating Attorneys.

(5) *Because it can directly benefit you.

ALS Prepaid and Group Legal Services Plan is the way to bring you together with an untapped and potentially vast source of clients. As ALS grows, you and other Arizona lawyers will be able to provide increasingly essential legal services to a growing number of middle and lower-middle income Arizonans. The payment for your services will be "guaranteed" subject to the policy benefits and methods of payment discussed below. This can mean elimination of "uncollectables" and no more time-consuming and expensive collection problems. Even for your existing clients, if as they become ALS insureds, you will be able to provide legal services which they could not previously afford or which you could

not provide on an economic basis.

HOW DO YOU ENROLL AS AN ALS PARTICIPATING ATTORNEY

After you have reviewed the materials provided, please complete the enclosed application form and submit it to Arizona Legal Services, Inc., P. O. Box 7283, Phoenix, Arizona 85011.

There is no charge to become an ALS Participating Attorney.

HOW WILL THE ALS PROGRAM WORK?

Concurrent with ALS's issuance of an ALS/Midwest insurance policy to a qualified group, ALS will enter into a "Direct Service Contract" with the group. Under that Contract, ALS will furnish to the insured group members its panel of Participating Attorneys--the attorneys who have agreed to provide the covered legal services at no cost to the insureds (beyond the premiums already paid by or for them). The individual insureds will be free to select from

among those Participating Attorneys. A periodically up-dated list of Participating Attorneys will be provided to designated representatives of the insured groups, and ALS will operate a referral program for insureds who do not know or have a Participating Attorney. In addition, ALS will develop and provide educational materials and services designed to promote "preventive law" and the responsible use of coverage.

Participating Attorneys who provide covered services will be paid directly by ALS in amounts not exceeding the maximum amounts set forth in the policy. Under the terms of ALS's agreement with Midwest Mutual during any twelve month period the insurance company will pay out for claims up to and including eighty percent of earned premiums on all policies in effect during that period. Participating Attorneys will be obligated to provide the

covered services during that period; but to protect those who provide covered services late in a period, and to protect against incurred but unreported claims, all Participating Attorneys will be paid in two stages. Initially, upon submission of claims, each attorney will be paid 60% of his fee. The balance will be deposited in an Arizona bank and shortly after the end of a period that balance will be paid together with the interest earned thereon. If, however, claims have exceeded eighty percent of earned premiums then the second distribution will be reduced so that all Participating Attorneys who provided services will bear the risk of excess claims on a pro-rata basis.

* * * *

(14)

PARTICIPATING ATTORNEY RULES

These Participating Attorney Rules (hereinafter referred to as Rules), adopted

on November 8, 1974, by the Board of Directors of ARIZONA LEGAL SERVICES, INC. (hereinafter referred to as ALS), are as follows:

* * * *

(15)

SECTION 3. ACCEPTANCE AND
REJECTION OF CLIENT;
WITHDRAWAL FROM REPRESENTATION

A participating attorney shall accept each insured, who requests his services or is referred to him by ALS as a client. He may, however, reject an insured on any reasonable grounds, but shall not reject any insured seeking his services by reason of amount of fees to which he may be entitled under the terms of the program.

If a participating attorney rejects an insured or withdraws from further representation of an insured, he shall promptly report in writing to ALS (on a form to be furnished by ALS) his reasons for such a rejection or withdrawal. If that insured indicates a desire to be referred

to another attorney, the participating attorney shall endeavor to refer such insured to another participating attorney willing to serve the insured; however, with respect to rejection only, the participating attorney may instead immediately request of ALS, by telephone, that such insured be referred to another participating attorney pursuant to the ALS referral program.

* * * *

(16)

SECTION 5. PAYMENT.

Each participating attorney shall accept payment for covered services provided to an insured according to such methods and at such rates as the Board of Directors of ALS may from time to time establish, and shall accept such payment as payment in full therefor and shall make no additional charges therefor to the insured.

* * * *

(20)

WHAT DOES THE ALS PROGRAM PROVIDE AND PAY?

The maximum amount the Company shall be obligated to pay on behalf of all INSUREDS to ARIZONA LEGAL SERVICES, INC. (hereinafter referred to as ALS), for the benefit of ATTORNEY, for any twelve month period shall be eighty percent (80%) of earned premium.

The amounts that the Company shall be obligated to pay on behalf of an INSURED to ALS for the benefit of ATTORNEY, for each item of each coverage and the maximum amount for each coverage listed below during such twelve month period shall be:

<u>Coverages</u>	<u>Item Charge</u>	<u>Maximum Benefits</u>
A. Non-business bankruptcy		\$300
1. Preparing schedules and first meeting of creditors:		
(a) Individual	\$225	

<u>Coverages</u>	<u>Item Charge</u>	<u>Maximum Benefits</u>
(b) Joint (Individual and Spouse) additional	\$ 75	
B. <u>Marital Proceedings</u>		
1. Dissolution of Marriage, Annulment or Separation		
(a) NAMED INSURED Only		\$600
(1) Uncontested dissolution, annulment or separate maintenance without Order to Show Cause and Exclusive of Property Settlement Agreement	\$250	
(2) Original Order to Show Cause	\$100	
(3) Any other Order to Show Cause or Motion, or defense thereof (not exceeding two such matters)	\$100 each	
(21)		
(4) Property Settlement (not exceeding four (4) hours)	\$150	

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<u>Coverages</u>	<u>Item Charge</u>	<u>Maximum Benefits</u>
(5) Contested dissolution,		
Annulment or separate maintenance--same as "Civil Actions" this schedule		
(b) For spouse's legal fees if family plan	\$300*	\$300*
or		
2. Defense of Motion to modify dissolution, annulment or separate maintenance decree		\$ 40 per hour, not to exceed \$300
*Indemnity - this sum is available to spouse for attorneys fees, but attorney is not restricted to charging this amount. Additional fees, if any, would be charged directly to spouse and would not be covered under this program.		
<u>C. Court Adoption Proceeding</u>		\$500
1. Agency Adoption	\$150	

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<u>Coverage</u>	<u>Item Charge</u>	<u>Maximum Benefits</u>
2. Step-parent Adoption	\$150	
3. Obtain Consent-additional	\$75	
4. Nonconsent Adoption-additional	\$150	
5. Independent Adoption	\$200	
6. Contested-same as "Civil Actions" this schedule		
<u>D. Guardianship and Conservatorship</u>		
Same as "Civil Actions" this schedule		
<u>E. Juvenile Court Proceedings</u>		
(Preparation, negotiation and court appearance)	\$100	\$200
<u>F. Habeas Corpus Court Proceedings</u>		\$200
(22)		
<u>G. Defense of Felony Charges</u>		\$1,250

476		
<u>Coverages</u>	<u>Item Charge</u>	<u>Maximum Benefits</u>
1. Appearance on Felony Charge and Preliminary Hearing Only	\$ 235	
2. Felony disposition:		
(a) Arraignment--half day, and plea negotiations	\$ 325	
OR		
(b) Arraignment; preparation; and trial up to and including 4 days	\$1,100	
3. Probation and Sentence only	\$ 200	
H. <u>Defense of Charge of Driving While Intoxicated</u>		\$500
1. Misdemeanor Arraignment	\$ 100	
2. Misdemeanor Disposition:		
(a) Plea negotiations and disposition	\$ 150	
OR		
(b) Trial preparation; and trial up		

477		
<u>Coverage</u>	<u>Item Charge</u>	<u>Maximum Benefits</u>
to and including 4 days (including de novo appeal to Superior Court)	\$ 500	
I. <u>Defense of Misdemeanor Charges Involving Violation of Motor Vehicle Traffic Statutes</u>		
(Same as Schedule H above)		
J. <u>Defense of Misdemeanor Charges Except Traffic Violations, Disturbing the Peace and Intoxication</u>		
(Same as Schedule H above)		
(23)		
K. <u>Defense of Civil Action except Use of SELF PROPELLED VEHICLE</u>		\$1,000
1. Pleading		
Preparation, filing and appearances on Demurrer or Motion; preparation of Answer, Response, Counterclaim	\$ 40 per hour up to \$250	

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<u>Coverage</u>	<u>Item Charge</u>	<u>Maximum Benefits</u>
2. Preparation (Plus pleading above)		
Filing and serving interrogatories; answering interrogatories; depositions; pre-trial or settlement conferences; preparation for trial	\$ 40 per hour up to \$650	
3. Trial up to and including four days (plus pleading and preparation above)	\$ 40 per hour for pleading and preparation; \$125 per one-half day for Trial; up to \$1,000	
<u>L. Legal Advice, Negotiations and Simple Document Preparation</u>	\$ 20 per one-half hour	\$ 160
<u>M. Major Trial</u>		
1. Homicide or Conspiracy	\$100 per one-half day	\$7,500
OR		
2. All other	\$125 per one-half day	\$2,500

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* * * *

RESPONDENTS EXHIBIT NO. 17

CASES OPENED AFTER ADVERTISING

Domestic Relations	35
Bankruptcy	16
Name Change	5
Adoption	4
Personal Injury	4
Real Estate	2
Wills	2
Collection	1
Probate	1
Miscellaneous	5

TOTAL 75

CASES OPENED DUE TO ADVERTISING

Bankruptcy	10
Adoption	4
Name Change	4
Personal Injury	2
Wills	1

480

Miscellaneous 5

TOTAL 24

Cases opened after advertising 75

Less Domestic Relations cases 35

TOTAL 40

24 cases out of 40 cases opened were
due as a result of Advertising, or 60%.

* * * *

STIPULATION FOR ADDITION TO THE RECORD
(Filed April 23, 1976)

The parties stipulate that if an appropriate member of the Arizona Republic were called as a witness, the testimony would be that the Sunday circulation of the Republic outside the State of Arizona is at least 2,000 copies. This datum of fact may be added to the record without objection by the Complainant, who waives cross-examination.

Respectfully submitted this 8th day

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of April, 1976.

Lewis and Roca
By Orme Lewis
John R. Frank
Attorneys for The
State Bar of Arizona

William C. Canby, Jr.
Attorney for Respondents

* * * *

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE
OF THE
STATE BAR OF ARIZONA

FOR

DISTRICT NO. 5

In the Matter of a Member of)	
The State Bar of Arizona)	
)	
JOHN R. BATES and)	No. 76-1-S16
VAN O'STEEN,)	
)	
Respondents.)	
)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW -
ADMINISTRATIVE COMMITTEE
(Filed April 8, 1976)

This matter having come on for full
and final hearing on April 7, 1976, before
the Special Administrative Committee of
Ivan Robinette, Carl W. Divelbiss, and

Philip E. von Ammon, Chairman, and the matter having been heard, evidence having been taken, and briefs having been submitted, it is now determined and recommended by the Committee as follows:

FINDINGS OF FACT

The Respondents, John R. Bates and Van O'Steen, did, in fact, cause an advertisement for their law office to be published in a Phoenix newspaper, as charged in the Formal Complaint and as admitted in the Answer.

CONCLUSIONS OF LAW

The act of the Respondents violates Disciplinary Rule 2-101(B).

RECOMMENDATIONS

It is the recommendation of the committee that each of the Respondents be suspended from the practice of law for not less than six (6) months.

DONE by the Chairman for and on behalf of the committee (2) and with the concur-

rence of the members of the committee, this 8th day of April, 1976.

By Philip E. von Ammon
Chairman

* * * *

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE

OF THE

STATE BAR OF ARIZONA

FOR

DISTRICT NO: 4A

In the Matter of a Member)
) No. 76-1-S16
of the State Bar of Arizona)
)

RESPONDENTS' OBJECTIONS TO FINDINGS
AND CONCLUSIONS OF ADMINISTRATIVE
COMMITTEE
(Filed April 23, 1976)

1. Pursuant to Rule 35(c)(4) of the Rules of the Supreme Court of Arizona, Respondents object to the recommendation of the administrative committee entered in the above matter on April 8, 1976. The objection is based upon the contention that Disciplinary Rule 2-101(B) and these proceed-

ings are invalid for reasons advanced by Respondents in the records of this proceeding. Objection is further made to the penalty recommended by the administrative committee.

2. Pursuant to Rule 36(b) of the Supreme Court of Arizona, Respondents request permission to appear by their attorney before the Board of Governors and be heard on matters relating to the recommended penalty in this proceeding.

3. Pursuant to Rule 33(d)(1), Respondents waive the privacy of these proceedings and request that these proceedings from their inception be considered a matter of public record.

Respectfully submitted this 23rd day of April, 1976.

By: William C. Canby, Jr.
Attorney for Respondents

This original document delivered this 23rd day of April, 1976 to Philip von

Ammon, Esq. Copy of the same delivered this 23rd day of April, 1976 to John P. Frank, Esq.

By: Van O'Steen

* * * *

BEFORE THE BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA

In the Matter of a Member of)	
The State Bar of Arizona)	
)	
JOHN R. BATES and)	No. 76-1-S16
VAN O'STEEN,)	
Respondents.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATIONS
(Filed April 30, 1976)

This matter having come on for full and final hearing on April 7, 1976 before the Special Administrative Committee of Ivan Robinette, Carl W. Divelbiss, and Philip E. von Ammon, Chairman, and the matter having been heard, evidence having been taken, and briefs having been submitted,

and the Board of Governors having reviewed the above matter on April 28, 1976, it is now determined and recommended by the Board as follows:

FINDINGS OF FACT

The Respondents, John R. Bates and Van O'Steen, did in fact cause an advertisement for their law office to be published in a Phoenix newspaper, as charged in the Formal Complaint and as admitted in the Answer.

CONCLUSIONS OF LAW

The act of the Respondents violates Disciplinary Rule 2-101(B).

RECOMMENDATIONS

The act of the Respondents was on one hand a deliberate and knowing violation of the Rule, but on the other hand was undertaken as an earnest challenge to the validity of a rule they conscientiously believe to be invalid. We therefore recommend a penalty of a one-week suspension

from the (2) practice of law for each of them, the weeks to run consecutively and not simultaneously, so as to avoid the closing down of their practice.

We further recommend that the enforcement of this discipline be suspended until 30 days after a final decision has been made concerning the validity of the rule in the highest court to which it is presented.

The foregoing Findings of Fact, Conclusions of Law, and Recommendations are issued by the Board of Governors this 30th day of April, 1976, pursuant to Rule 36(d) of the Rules of the Supreme Court of the State of Arizona.

By: Mark I. Harrison,
President
State Bar of Arizona

* * * *

SPECIAL LOCAL ADMINISTRATIVE COMMITTEE

OF THE

STATE BAR OF ARIZONA

FOR

DISTRICT NO. 4A

In the Matter of a Member)
)
 Of the State Bar of Arizona)
)
 JOHN R. BATES and) No. 76-1-S16
 VAN O'STEEN,)
)
 Respondents.)

RESPONDENTS' OBJECTION TO RECOMMENDATION
 OF BOARD OF GOVERNORS
 (Filed May 3, 1976)

Pursuant to Arizona Supreme Court Rule
 36(d), Respondents BATES and O'STEEN object
 to the recommendation of the Board of Gover-
 nors of the State Bar of Arizona entered in
 these proceedings on April 30, 1976.

Respectfully submitted this 3rd day
 of May, 1976.

By: William C. Canby, Jr.
 Attorney for Respondents

This original document delivered this 3rd
 day of May, 1976, to the Board of Gover-
 nors of the State Bar of Arizona, 234
 North Central Avenue, Phoenix, AZ and a

copy delivered this 3rd day of May, 1976
 to John Frank, Esq., Lewis & Roca, 100 West
 Washington, Phoenix, AZ.

By: Van O'Steen

* * * *

OPINION OF THE SUPREME COURT OF ARIZONA

The opinion of the Supreme Court of
 Arizona may be found in the Jurisdictional
 Statement beginning at page 1a.

* * * *

NOTICE OF APPEAL

The notice of appeal may be found in the
 Jurisdictional Statement at page 19a.